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Letter dated 17 November 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Residual Mechanism for Criminal Tribunals, submitted pursuant to paragraph 16 of Security Council resolution 1966 (2010).

I would be grateful if the present letter and its annexes could be circulated to the members of the Security Council.

(*Signed*) Theodor **Meron**

16-20432 (E) 021216

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Annex I

[Original: English and French]

Assessment and progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron, for the period from 16 May to 15 November 2016

1. The present report, the ninth in a series, is submitted pursuant to Security Council resolution 1966 (2010), by which the Council established the International Residual Mechanism for Criminal Tribunals, and, in paragraph 16 of that resolution, requested the President and the Prosecutor of the Mechanism to submit reports every six months to the Council on the progress of the work of the Mechanism.[1] Certain information contained in this report is submitted pursuant to the Council's request in paragraph 20 of its resolution 2256 (2015).

I. Introduction

2. The Security Council, by its resolution 1966 (2010), established the International Residual Mechanism for Criminal Tribunals to carry out a number of essential functions of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, including the trial of fugitives who are among the most senior leaders suspected of being primarily responsible for crimes, after the closure of the two Tribunals. Pursuant to resolution 1966 (2010), the Mechanism shall operate for an initial period of four years, and subsequently for periods of two years, following reviews of its progress, unless the Council decides otherwise.

3. In accordance with its mandate, and as set forth below, the Mechanism has assumed responsibility for a number of functions of both Tribunals, including with regard to a range of judicial activities, the enforcement of sentences, the resettlement of acquitted and released persons, the protection of victims and witnesses and the management of archives.

4. On 31 July 2016, the mandate of the liquidation team for the International Criminal Tribunal for Rwanda concluded and the Mechanism assumed full responsibility for the remaining, minor, liquidation tasks. While the International Tribunal for the Former Yugoslavia proceeds in the finalization of its work, drawing on the lessons learned from the liquidation of the former Tribunal, the Mechanism continues to work closely with the principal officers and staff of the Tribunal to ensure the smooth transition of its remaining functions and services, consistent with its projected closure timeline.

5. The Mechanism continues to be guided in its activities by the Security Council's vision of it as a small, temporary and efficient structure, the functions and size of which will diminish over time, with a small number of staff commensurate with its limited functions. To that end, the Mechanism continues to draw upon the best practices of and lessons learned from both International Tribunals, and from

[1] Unless otherwise specified, figures discussed in this report are accurate as of 15 November 2016.

other tribunals, to actively pursue new ways to improve its operations, procedures and working methods, and to maintain flexibility in staff assignments. By doing so, the Mechanism seeks to maximize effectiveness and efficiency across both of its branches, while maintaining relatively low staffing levels.

6. The Mechanism is mindful of the temporary nature of its mandate. Wherever possible, detailed projections of the duration of the residual functions entrusted to the Mechanism are reflected in the present report, in accordance with Security Council resolution 2256 (2015). Such projections are based on available data and, as a consequence, at this stage of the Mechanism's work, are both limited in nature and subject to modification depending on evolving circumstances.

II. Structure and organization of the Mechanism

7. In accordance with its statute (see Security Council resolution 1966 (2010), annex 1), the Mechanism has a single set of principals — the President, the Prosecutor and the Registrar — who have responsibility over two branches, one located in Arusha, United Republic of Tanzania, and the other in The Hague, the Netherlands. As mandated, the Mechanism commenced operations at its Arusha branch on 1 July 2012, assuming functions derived from the International Criminal Tribunal for Rwanda. The Hague branch commenced operations on 1 July 2013, assuming functions derived from the International Tribunal for the Former Yugoslavia.

A. Organs and principals

8. Article 4 of the statute of the Mechanism provides that it shall consist of three organs, (a) the Chambers, (b) the Prosecutor, and (c) the Registry, to provide administrative services for the Mechanism. The workloads of the Chambers and of the Registry are set forth below.

9. The President of the Mechanism is Judge Theodor Meron. The Prosecutor is Mr. Serge Brammertz. The Registrar is Mr. John Hocking.

B. Judges

10. Article 8 of the statute of the Mechanism provides that the Mechanism shall have a roster of 25 independent judges. Pursuant to article 8, paragraph 3, of the statute, judges "shall only be present at the seats of the branches of the Mechanism as necessary at the request of the President to exercise the functions requiring their presence. In so far as possible, and as decided by the President, the functions may be exercised remotely…".

11. During the reporting period, and in accordance with article 10, paragraph 2, of the statute, the Secretary-General appointed Judge Seymour Panton to serve as a judge of the Mechanism following the resignation of Judge Patrick Robinson. Thereafter, in accordance with article 10, paragraph 3, of the statute and paragraph 2 of Security Council resolution 2269 (2016), the Secretary-General appointed all judges of the Mechanism for a new, two-year term of office, commencing on 1 July 2016.

12. On 26 and 27 September 2016, the Mechanism's judges conducted their first in-person plenary session, having conducted previous plenaries by remote written procedure. During the plenary, all three principals of the Mechanism briefed the judges on matters related to their areas of responsibility and the judges further discussed issues pertaining to the internal functioning of the Mechanism and ways to strengthen its efficiency and improve its operations. During the reporting period, in furtherance of the Mechanism's effective and transparent management, the President also continued his tradition of providing regular written updates and briefings to his fellow judges on matters related to the work of Chambers and of the Mechanism as a whole.

13. On 5 October 2016, the President informed the President of the Security Council of the arrest, on or about 21 September 2016, of Judge Aydin Sefa Akay, a Turkish national, by law enforcement officials of the Government of Turkey in relation to allegations of conduct connected to the acts of 15 July 2016 directed against the constitutional order of Turkey (S/2016/841). Judge Akay was, at the time of his arrest, carrying out his functions for the Mechanism, having been assigned on 25 July 2016 to a bench of the Appeals Chamber in the still-pending review case *The Prosecutor v. Augustin Ngirabatware*. Pursuant to article 29 of the statute of the Mechanism, the judges of the Mechanism enjoy diplomatic immunity for those periods of time in which they are engaged on the business of the Mechanism. Accordingly, the Office of Legal Affairs, on behalf of the Secretary-General, has formally asserted diplomatic immunity with respect to Judge Akay and requested his immediate release from detention and the cessation of all legal proceedings against him. To date, however, Judge Akay remains in detention. Judge Akay's continued detention prevents the Appeals Chamber bench from reaching a decision on the pending request for review, the postponement of which has materially impacted the conduct of the proceedings, with corresponding implications for the fundamental rights of the applicant. This situation also has broader and serious implications for the Mechanism's ability to carry out its core judicial functions in accordance with the remote-judging model adopted by the Security Council, pursuant to which, for the most part, judges carry out their functions in their State of nationality.

C. The branches

14. The Government of the United Republic of Tanzania continues to cooperate with the Mechanism, in line with the headquarters agreement for the Arusha branch, which entered into force on 1 April 2014. The agreement between the United Nations and the Netherlands concerning the headquarters of the branch of the Mechanism in The Hague, which entered into force on 1 September 2016, also applies *mutatis mutandis* to the International Tribunal for the Former Yugoslavia.

15. In close cooperation with the Government of the United Republic of Tanzania, construction works for the Mechanism's new premises in Arusha were completed during the reporting period. The project has remained within budget. The construction, which was undertaken by a local company, following a rigorous procurement process, maximized the usage of local materials and building methods and benefited from best practices and lessons learned in other capital projects undertaken by the United Nations. The Mechanism's management of the construction was deemed to be satisfactory by the Office of Internal Oversight

Services (OIOS). During the reporting period, the Mechanism also continued, with the support of the administration of the International Tribunal for the Former Yugoslavia, to organize its work for the post-construction phase, in particular the provision of goods and services essential for the smooth running of operations in the new facility. It is anticipated that the Mechanism will assume full occupancy of its new premises immediately following the official opening of the Mechanism, scheduled for 25 November 2016. The Mechanism is grateful to the United Republic of Tanzania for its steadfast support for the completion of this project, alongside its generous provisions of land for the site, a permanent road to the site, as well as connections for utilities, in particular water, electricity and Internet connections.

16. The Arusha sub-office in Kigali continues to provide protection and support services to witnesses and to support the activities of the monitors of the cases of the International Criminal Tribunal for Rwanda that have been referred to Rwanda, pursuant to article 6 of the statute of the Mechanism.

17. The Hague branch of the Mechanism is co-located with the International Tribunal for the Former Yugoslavia, and the Mechanism has a strong preference, based on efficiency and cost-effectiveness, for remaining at its current premises after the closure of the Tribunal. Ongoing technical discussions and negotiations with the authorities of the host State, the owners of the premises, and possible co-tenants on this matter are progressing.

D. Administration and staffing

18. The basic requirements for a small, self-standing administration for the Mechanism were developed in cooperation between the Mechanism and the two International Tribunals and were included in the Mechanism's 2014-2015 and 2016-2017 budgets, as approved by the General Assembly. The recruitment of the administrative staff for the Mechanism, in line with those requirements, has taken place in phases as the International Criminal Tribunal has closed and the International Tribunal for the Former Yugoslavia downsizes, including the gradual transference of its administrative functions to the Mechanism. It is anticipated that by the end of 2017 the Mechanism will be a fully independent entity. Through the phased transfer of administrative functions and the extensive use of double-hatting, duplication of resources has been avoided and economies of scale maximized.

19. The Mechanism provided the liquidation team for the International Criminal Tribunal with all required administrative, security, information technology and logistical support during the liquidation period from 1 January through 31 July 2016. On 1 August 2016, the Mechanism assumed full responsibility for pending administrative and financial matters pertaining to the Tribunal and it will continue to focus on those pending matters until they are resolved.

20. The Human Resources, Budget and Finance, Procurement, Information Technology, Security and General Services Sections of the International Tribunal for the Former Yugoslavia have continued to perform their functions for the Tribunal itself and for both branches of the Mechanism. They did so in accordance with the plan for the transfer of administrative functions to the Mechanism and supported by a limited number of administrative staff of Mechanism, commensurate with its size.

21. The Mechanism has a vacancy rate of only 4 per cent for its continuous posts. As at 10 October 2016, 169 of the 176 approved continuous posts for the biennium had been filled in order to carry out the Mechanism's continuous functions. An additional 160 personnel are serving as general temporary assistance to assist with ad hoc needs, including judicial work, litigation and transition issues. These positions are short-term in nature and the number may fluctuate depending on workload. Since the commencement of the Mechanism's work, recruitment has taken place in alignment with all applicable rules, and no grievance cases have been brought before the organs of administrative justice.

22. The Mechanism's continuous and general temporary assistance positions include nationals of 65 States: Albania, Australia, Austria, Belgium, Benin, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cameroon, Canada, China, Côte d'Ivoire, Croatia, Cuba, Cyprus, the Democratic Republic of the Congo, Denmark, the Dominican Republic, Ethiopia, Fiji, Finland, France, the Gambia, Germany, Ghana, Greece, Guinea, Indonesia, Ireland, Italy, Jamaica, Kenya, Latvia, Lebanon, Liberia, Malaysia, Mali, Nepal, the Netherlands, New Zealand, Niger, Nigeria, Pakistan, the Philippines, Poland, the Republic of Korea, Romania, the Russian Federation, Rwanda, Senegal, Serbia, South Africa, Spain, the Sudan, Sweden, the former Yugoslav Republic of Macedonia, Turkey, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America and Zimbabwe.

23. Sixty-one per cent of the professional staff of the Mechanism are female, surpassing the Secretary-General's gender parity goals. In addition, the Mechanism has in place focal points for gender issues; sexual exploitation and abuse; lesbian, gay, bisexual and transgender concerns; as well as for diversity and inclusion issues.

24. Further details concerning the staffing of the Mechanism by division are reflected in enclosure 1 to the present report.

25. Out of the overall biennial appropriation for the Mechanism for 2016-2017, of approximately $127 million, approximately $44.5 million had been committed as of 8 November 2016, representing a rate of implementation of 35.1 per cent. Further details and a breakdown of the Mechanism's costs, presented in terms of funds committed as at 8 November 2016, are set forth in enclosure 2 to the present report. It should be noted that the Mechanism has continued to rely heavily on double-hatting arrangements during the reporting period. The approved budget levels take into account the support provided by staff members charged against posts of the International Tribunal for the Former Yugoslavia under these double-hatting arrangements.

E. Legal and regulatory framework

26. Having established a structure to govern its activities, the Mechanism continues to develop rules, procedures and policies that harmonize and build upon the best practices of both International Tribunals, as well as its own practice, in order to achieve its mandate in inefficient fashion.

27. During the reporting period, the judges of the Mechanism adopted amendments to the Rules of Procedure and Evidence, in the interest of enhancing the clarity of the Rules and, in one instance, their inclusivity and flexibility. In

addition, the Mechanism amended two practice directions: the Practice Direction on Filings Made Before the Mechanism for International Criminal Tribunals and the Practice Direction on Procedure for the Proposal, Consideration, and Publication of Amendments to the Rules of Procedure and Evidence of the Mechanism.

28. Furthermore, the Mechanism's Registrar issued a number of new policies and guidelines, including: (a) the Access Policy for the Records Held by the Mechanism for International Criminal Tribunals; (b) the Registry's internal guidelines on the development of Mechanism practice: directions, policies, and policy instruments; (c) the Remuneration Policy for Persons Assisting Indigent Self-Represented Accused before the Mechanism for International Criminal Tribunals; (d) the Remuneration Policy for Persons Representing Indigent Suspects and Accused in Contempt and False Testimony Proceedings before the Mechanism for International Criminal Tribunals; and (e) the guidelines on the submission of hourly invoices and remunerable activities for assistants to self-represented accused.

29. The Mechanism has also continued to develop and improve the procedures and policies that govern its administrative activities.

III. Judicial activities

30. During the reporting period, the Mechanism has been seized of a number of complex matters. The President and the judges have continued to engage in a wide variety of judicial activity, issuing 214 decisions and orders during the period. In accordance with article 8, paragraph 3, of the statute of the Mechanism, judicial activity was primarily carried out remotely. The President assigned matters to judges based on an equitable distribution of the workload. All of the judges on the roster are collectively supported by a small Chambers team of 17 staff distributed across both branches of the Mechanism.

31. Of the 214 decisions and orders, 85 (or approximately 40 per cent) related to requests for access to confidential material or for the variation of protective measures. These requests were made primarily by prosecution authorities in national jurisdictions but also included requests from accused or appellants in pending cases in relation to their defence or appeals or convicted persons seeking information in relation to possible requests for review. All such requests were primarily adjudicated by Single Judges working remotely or by the presiding judge in a pending case and typically involved the issuance of one or more preliminary orders prior to the issuance of the final decision. Although it is not possible to fully foresee when, and how often, requests related to protective measures will arise, as recognized in the report of the Secretary-General preceding the establishment of the Mechanism (S/2009/258, para. 102), it is anticipated that requests for access to confidential material or the variation of protective measures will continue to be filed so long as national authorities continue to investigate and prosecute cases in domestic jurisdictions. In addition, accused or appellants will continue to file such requests while their cases are pending, as indicated below, and convicted persons are likely to do so until the conclusion of their sentence.

32. Judicial work was also carried out remotely by Single Judges in relation to other types of motions, including requests for compensation, disclosure of

exculpatory material or investigations into allegations of false testimony or contempt. For example, on 13 June 2016, a Single Judge ordered the Registrar to appoint an *amicus curiae* to investigate allegations of false testimony in relation to evidence given in the *Ntakirutimana* case. On 10 October 2016, the Registrar appointed an *amicus curiae* and the investigation is ongoing. In respect of an investigation into possible contempt in the *Akayesu* case, a Single Judge terminated the proceedings on 17 October 2016 after extensive litigation involving a number of preliminary orders and decisions. Since the Mechanism has a continuing obligation to safeguard the administration of justice, its duty to investigate and prosecute allegations of false testimony or contempt, subject to the provisions of article 1 (4) of the statute, will continue until its closure. During the reporting period, a Single Judge also completed an inquiry into the circumstances surrounding the death of Zdravko Tolimir while in custody at the United Nations Detention Unit in The Hague, and presented his report to the President on 7 September 2016. The President informed the Security Council accordingly.

33. In addition to the above, the judges of the Mechanism continued their work on trials, appeals and requests for review related to the core crimes enumerated in the statute as set forth below.

34. On 9 December 2015, the Appeals Chamber of the International Tribunal for the Former Yugoslavia issued a judgment in the case of Jovica Stanišić and Franko Simatović, quashing their acquittals and ordering a retrial on all counts. A Trial Chamber of the Mechanism at the branch in The Hague is seized of the case. On 18 December 2015, Mr. Stanišić and Mr. Simatović pleaded not guilty at their initial appearance. The Presiding Judge of the Trial Chamber actively oversaw the pre-trial proceedings and trial planning in this case from the seat of the Mechanism in The Hague at no additional cost to the Organization until the completion of his mandate as a permanent judge of the International Tribunal in July 2016. He is now overseeing the pre-trial activity remotely, unless his presence is required at the seat of the Mechanism to conduct hearings or attend to trial preparation matters. The other two judges on the bench have primarily carried out their work in respect of this case remotely since the commencement of the case.

35. Trial preparation hearings were held on 19 February 2016, 23 May 2016 and 28 September 2016. The latter hearing was held before the full bench of the Trial Chamber, making cost-effective use of the presence of the other two judges assigned to the bench in The Hague immediately following the first in-person plenary of judges. Additional hearings are anticipated in December 2016. These hearings will facilitate the determination of the scope of the trial, the manner of the presentation of evidence and modalities for the conduct of the trial, which are key factors in properly projecting the length and duration of the proceedings. The Prosecution filed its pre-trial brief on 5 September 2016, and the pre-trial conference before the full bench of judges is anticipated in the first quarter of 2017. At this stage, this full retrial — unprecedented before the Mechanism and the ad hoc Tribunals — is proceeding on track, and it will be possible to include preliminary projections as to the anticipated overall length of the proceedings in the next report once the modalities and scope of trial have been clarified at the upcoming hearings.

36. On 22 July 2016, Radovan Karadžić and the Prosecution filed notices of appeal against the trial judgment issued on 24 March 2016 by a Trial Chamber of

the International Tribunal for the Former Yugoslavia in the *Karadžić* case. The Trial Chamber found Mr. Karadžić guilty of genocide, crimes against humanity and violations of the laws and customs of war, and sentenced him to 40 years of imprisonment. In their notices of appeal, Mr. Karadžić and the Prosecution presented a total of 54 grounds of appeal. Citing the unprecedented breadth and complexity of the case, the large amount of evidence on the record, the length of the trial judgment (being the longest ever issued by the International Tribunal or any other international criminal tribunal), and the complexity of the issues raised on appeal, the parties jointly requested that the Appeals Chamber grant extensions of time for filing their appeal and response briefs. The Appeals Chamber partly granted the joint request of the parties, ordering them to file their appeal briefs by 5 December 2016 and the response briefs within 85 days thereof. Pending receipt of the appeal and response briefs, the estimate of three years for the completion of the case previously reported in the Mechanism's review report of 20 November 2015 (S/2015/896) remains unchanged. At the current stage of the proceedings, all of the judges on the bench in this case are carrying out their work remotely, with the exception of the President, who is presiding.

37. On 31 March 2016, a Trial Chamber of the International Tribunal for the Former Yugoslavia issued its judgment in the case of Vojislav Šešelj, finding him not guilty on all counts. The Prosecution filed its notice of appeal on 2 May 2016 and its appeal brief on 29 August 2016, arguing that the Trial Chamber had erred in law by failing to deliver a reasoned judgment and that it erred in fact by acquitting Mr. Šešelj. The Prosecution has requested that the Appeals Chamber revise the trial judgment and find Mr. Šešelj guilty or, in the alternative, that it reverse the judgment of acquittal and order a retrial. On 8 July 2016, the President, as Pre-appeal Judge, authorized Mr. Šešelj in the circumstances of this case to file his response brief, if any, within 80 days of the receipt of the Bosnian/Croatian/Serbian translation of the complete trial judgment, including all appended judicial opinions and the Prosecution's appeal brief in all three languages. The translation of the trial judgment, together with the related judicial opinions, and the Prosecution appeal brief were served on Mr. Šešelj on 28 September 2016. The response brief is currently due by 19 December 2016. Pending the full briefing of the appeal, the estimate of three years for the completion of the case previously reported in the Mechanism's review report of 20 November 2015 likewise remains unchanged. At the current stage of the proceedings, all the judges on the bench in this case are carrying out their work remotely, with the exception of the President, who is presiding.

38. On 8 July 2016, Augustin Ngirabatware filed a request for review of his judgment. Briefing has concluded in the matter, and it is pending consideration by the bench upon the timely resolution of the situation of Judge Akay, a member of the bench, as set forth above. Assuming such resolution, if the review is authorized, a hearing will be scheduled at the earliest opportunity to consider the merits of the request. As long as Judge Akay remains detained, it is neither possible to reach a decision on the authorization of review nor to give a projection for the completion of this matter.

39. On 4 October 2016, the Appeals Chamber, with all judges working remotely, except for the Presiding Judge, Judge Burton Hall, who was double-hatted with the

International Tribunal for the Former Yugoslavia during most of the case, unanimously rejected Jean Uwinkindi's appeal against the decision of a Trial Chamber of the Mechanism dismissing his request for the revocation of the referral of his case to Rwanda. Earlier, the Appeals Chamber dismissed six requests for admission of additional evidence filed by Mr. Uwinkindi in connection with his appeal.

40. The President of the Mechanism has, pursuant to his authority in the area of enforcement of sentences, issued six decisions in response to requests for early release during the reporting period as well as a number of other decisions and orders. He is currently seized of a number of other confidential enforcement matters. In reaching decisions on certain enforcement matters, the President consults the judges of the sentencing Chamber who are judges of the Mechanism through remote procedure.

41. During the reporting period, the President also issued a number of additional decisions and orders, including two decisions related to requests for legal aid. Moreover, the President issued 43 assignment orders, of which 35 were assigned to Single Judges and eight to the Appeals Chamber.

42. The projections for the duration of various judicial functions remain unchanged from those set forth in the Mechanism's review report of 20 November 2015, with the exception of projections of a possible appeal in the *Hadžić* case, which was terminated before the International Tribunal on the Former Yugoslavia on 22 July 2016, following the death of the accused, Goran Hadžić. These projections reflect estimates based on factors such as past experiences with cases conducted at the International Criminal Court for Rwanda and the International Court for the Former Yugoslavia, the scope of the case concerned, activity at the Mechanism to date and the efficient working methods of the Mechanism's Chambers. These projections presume that no extraordinary events occur during the course of the proceedings that may impact their conduct. All projections remain subject to periodic updating based on any new information. In this respect, the Mechanism recalls that the 12 May 2016 evaluation report by OIOS indicated, with respect to cases before the International Court for the Former Yugoslavia, that any changes based on the requirements of a just resolution of a case should not necessarily be construed as reflecting slippage in the conduct of a case and that accurate predictions as to completion could only be made at the close of a trial or at the conclusion of a briefing on appeal. With respect to projections for judicial activities other than trials and appeals from judgment, the Mechanism recalls the observations made in the above-mentioned report of the Secretary-General that "it is not possible to foresee when, and how often, requests related to contempt cases, protective orders, review of judgments, referral cases and pardon and commutation of sentences will arise" but that "such issues are more likely to arise within a period of 10 to 15 years after the closure of the Tribunals [...] and that the level of work involved [...] will inevitably decrease over time."(S/2009/258, para. 102)

43. The Mechanism remains committed to building on the best practices of the two International Tribunals and ensuring the expeditious conclusion of all matters. To that end, during the reporting period, efforts were undertaken to deploy various information technology resources to facilitate the remote work of the judges.

IV. Registry support to judicial activities

44. During the reporting period, the Registry continued to provide support to the Mechanism's judicial activities in both branches.

45. The Registry also processed and disseminated over 1,097 filings, including 79 Registry legal submissions, amounting in total to more than 10,982 pages. Additionally, it facilitated and serviced the pre-trial phase of the *Stanišić and Simatović* case retrial.

46. The Registry's Language Support Services translated 6,291 pages of documents, provided 16 conference interpreter days and produced 475 pages of transcript in English and French. Additionally, the Kinyarwanda Unit of the Language Support Services provided translations of, inter alia, the monitoring reports with respect to the cases referred to Rwanda. Furthermore, the Registry administered the Mechanism's legal aid system, overseeing an average of 36 defence teams comprising a total of approximately 100 defence team members.

V. Victims and witnesses

47. Pursuant to article 20 of the statute of the Mechanism and article 5 of the transitional arrangements (see Security Council resolution 1966 (2010), annex 2), the Mechanism is responsible for the support and protection of the thousands of protected witnesses who have testified in cases completed by the two Tribunals, as well as those witnesses who may appear before the Mechanism.

48. The Witness Support and Protection Unit continues to be fully operational at both branches of the Mechanism. Consistent with judicial protection orders, and in close collaboration with domestic authorities and other United Nations entities, the Unit provides security for witnesses by undertaking threat assessments and coordinating responses to security related requirements. The Unit also: ensures that protected witness information remains confidential; continues to contact witnesses when orders to seek consent to the rescission, variation, or augmentation of witness protective measures are received; and facilitates contact between parties and relocated witnesses or witnesses of opposite parties when so required.

49. As part of the Arusha branch's provision of support services to witnesses, witnesses residing in Rwanda continue to receive medical and psychosocial services. These services are particularly focused on the witnesses experiencing psychotrauma or living with HIV/AIDS, many of whom contracted the virus as a result of crimes committed against them during the genocide.

50. The branch in The Hague supported the pilot study, carried out by the Victims and Witnesses Section of the International Tribunal for the Former Yugoslavia, which was supported by the University of North Texas and partly financed by voluntary contributions, into the long-term impact that testifying before the International Tribunal has on witnesses. The final report on the pilot study was successfully launched in June 2016. The Arusha branch is liaising with the University of North Texas on a similar study of witnesses before the International Criminal Tribunal.

51. The witness protection teams at the two branches continue to exchange best practices and use a common information technology platform for their respective witness databases. This platform, accessible since November 2015, maximizes operational efficiency across both branches.

52. The Witness Support and Protection Unit has also complied with 19 judicial orders related to protected witnesses in connection with requests related to their protective measures.

53. It is expected that victim and witness protection will continue to be required in future bienniums in the light of the many judicial protection orders that will remain in force unless rescinded or waived. Determining how long the victim and witness protection function would need to remain operational is a difficult assessment to make. It may be required to provide support until at least the last witness is deceased, or, where applicable, until the cessation of protective measures covering a witness's immediate family members, and in relation to the relocated witnesses, until the last member of the immediate family is deceased.

VI. Fugitives and trial and appeal readiness

54. On 1 July 2012, in accordance with Security Council resolution 1966 (2010) and the statute of the Mechanism, the responsibility for tracking the remaining fugitives indicted by the International Criminal Tribunal for Rwanda was transferred to the Mechanism. Specifically, the Council urged all States, particularly those where fugitives are suspected to be at large, to further intensify cooperation with and render all necessary assistance to the Mechanism in order to achieve the arrest and surrender of all remaining fugitives as soon as possible.

55. Eight accused indicted by the International Criminal Tribunal remain fugitives. Of the eight fugitives, the Mechanism retains jurisdiction over three: Félicien Kabuga, Augustin Bizimana, and Protais Mpiranya. The cases of the other five fugitives have been referred to Rwanda. The arrest and prosecution of all eight remaining individuals remain a top priority for the Mechanism.

56. Consistent with its commitment to efficiency, the Mechanism continues to ensure that it is prepared to conduct a trial or appeal when a fugitive is apprehended and/or when any ongoing proceedings of the International Tribunal for the Former Yugoslavia result in an appeal or retrial. Pursuant to article 15, paragraph 4, of the statute of the Mechanism, rosters of qualified potential staff have been produced to enable the expeditious recruitment of the additional staff required to support these judicial functions.

57. Trial readiness will continue to be required until the remaining accused still at large are apprehended or confirmed to be deceased.

VII. Detention facilities

58. The Mechanism has continued to manage and operate the United Nations Detention Facility in Arusha since the transfer of this function from the International Criminal Tribunal for Rwanda on 1 October 2015.

59. It is expected that the services of the Detention Facility will continue to be required until all persons awaiting transfer to an enforcement State are transferred, or, alternatively, are released. Once the remaining convicted persons are transferred, the Facility will retain an area commensurate to the housing of the remaining three fugitives expected to be tried by the Mechanism after they are apprehended and will provide a residual custodial capacity for other individuals potentially appearing before the Mechanism. The Facility will need to continue to be operational, albeit in a reduced capacity, during the trial and appeal of these persons, and, if convicted, until their transfer to an enforcement State.

60. At its branch in The Hague, the Mechanism continued to rely on the provision of detention services by the International Tribunal for the Former Yugoslavia at the United Nations Detention Unit.

61. Management of the Detention Unit will be transferred to the Mechanism as the International Tribunal closes down. The services of the Unit will continue to be required until all trials and appeals are concluded and all detained persons released or transferred to an enforcement State, along with residual capacities, as described above.

VIII. Cases referred to national jurisdictions

62. Pursuant to article 6, paragraph 5, of its statute, the Mechanism is responsible for monitoring cases referred by the two International Tribunals to national courts, with the assistance of international and regional organizations and bodies.

63. The cases of three individuals indicted by the International Criminal Tribunal for Rwanda and subsequently apprehended, Jean Uwinkindi, Bernard Munyagishari, and Ladislas Ntaganzwa, were referred to Rwanda for trial. The *Uwinkindi* case is on appeal, the trial in the *Munyagishari* case is ongoing and the *Ntaganzwa* case is in the pretrial phase. Two additional individuals indicted by the Tribunal, Laurent Bucyibaruta and Wenceslas Munyeshyaka, have had their cases referred to France for trial. The *Bucyibaruta* case continues to be in the investigative phase, while an appeal is pending before the Chambre de l'instruction in relation to the *Munyeshyaka* case after it was dismissed last year by French investigative judges.

64. The Mechanism continued to monitor the cases referred to Rwanda with the pro bono assistance of five monitors from the Kenyan Section of the International Commission of Jurists, pursuant to a memorandum of understanding concluded with the Mechanism on 15 January 2015, and subsequently amended on 16 August 2016 to formally encompass the *Ntaganzwa* case. An interim monitor continued to monitor the two cases referred to France. The public monitoring reports in all five cases are available on the Mechanism's website (www.unmict.org).

65. The Mechanism continues to monitor any change of status in the case of Vladimir Kovačević, which was referred by the International Tribunal for the Former Yugoslavia to Serbia in March 2007.

66. The Mechanism's activities in relation to cases referred to national jurisdictions are expected to continue for the duration of such cases. While each case is different, it may be worth noting that Mr. Uwinkindi was transferred to

Rwanda for trial on 19 April 2012, that he was sentenced in December 2015 and that appeal proceedings are currently ongoing. If any of the five remaining fugitives whose cases have been referred to Rwanda for trial are arrested, then the estimate for the continuation of the Mechanism's monitoring function will need to be reassessed.

IX. Enforcement of sentences

67. In accordance with article 25 of the statute of the Mechanism, the President has jurisdiction over enforcement issues related to the Mechanism and the two International Tribunals, including the authority to designate the States in which convicted persons are to serve their sentence, to supervise the enforcement of sentences, and to decide on requests for pardon or commutation of sentence.

68. The Mechanism relies on the cooperation of States for the enforcement of sentences. Sentences are served within the territory of States Members of the United Nations that have concluded enforcement-of-sentence agreements or indicated their willingness to accept convicted persons under any other arrangement. The agreements concluded by the United Nations for the two International Tribunals remain in force for the Mechanism, unless superseded by subsequent agreements.

69. Currently, 23 persons convicted by the International Criminal Tribunal for Rwanda are serving their sentences either in Mali (13) or Benin (10). Currently 10 convicted persons are at the United Nations Detention Facility in Arusha, awaiting transfer to an enforcement State, and the Registrar is negotiating with States concerning the possible enforcement of their sentences.

70. Furthermore, 17 persons convicted by the International Tribunal for the Former Yugoslavia are serving their sentences in 9 States: Denmark (1), Estonia (3), Finland (2), France (1), Germany (5), Italy (1), Norway (1), Poland (2) and Sweden (1). Two convicted persons are at the United Nations Detention Unit in The Hague, awaiting transfer to an enforcement State, and the Registrar is negotiating with one State concerning the possible enforcement of their sentences.

71. The Mechanism, in coordination with national authorities, as well as the United Nations Development Programme (UNDP), continues efforts to address the recommendations of the relevant inspecting bodies charged with examining the conditions of detention in enforcement States. The implementation of the recommendations of an independent prison management expert engaged by the Mechanism is nearing completion in Mali.

72. The Mechanism continued to closely monitor the security situation in Mali and received advice and reports from the Department of Safety and Security of the Secretariat and the designated security official in Mali.

73. With the assistance of UNDP-Senegal, the Mechanism has completed the procurement of items required for the eight cells at a prison in Senegal to be fully operational for the enforcement of sentences. The prison cells were refurbished to international prison standards and handed over to the authority of the Government of Senegal by the International Criminal Tribunal.

74. It is anticipated that the transfer to enforcement States of all convicted persons currently held at the United Nations Detention Facility or the United Nations Detention Unit will be completed within the current biennium and that the enforcement of sentences function carried out under the authority of the President will continue until the last prison sentence has been served, subject to the application of rule 128 of the Rules of Procedure and Evidence of the Mechanism, which allows for the possibility of another body being designated to supervise the enforcement of sentences after the Mechanism ceases to exist in the event that any convicted person remains imprisoned in an enforcement State at that time. As set forth in the above-mentioned report of the Secretary-General, it is not possible to foresee when, and how often, requests for pardon and commutation of sentence will arise, although in 2009 it was suggested that, in general terms, such issues are more likely to arise within a period of 10 to 15 years after the closure of the Tribunals and that the level of work involved will inevitably decrease over time. In that same report, it was noted that, in the views of the Tribunals, applications for commutation of sentence, pardon or early release could be anticipated until at least 2027 for cases of the International Tribunal for the Former Yugoslavia and until around 2030 for cases of the International Criminal Tribunal for Rwanda. The Mechanism no longer considers this 2009 estimate to be accurate, given the number of persons who are serving life sentences, several of whom will not be eligible for consideration of early release until at least 2035.

X. Relocation of acquitted and released persons

75. The Mechanism has continued to deploy all reasonable efforts to ensure sustainable solutions for the resettlement of the released and acquitted persons and to provide those still residing in Arusha with relevant assistance, in line with the strategic plan on the relocation of acquitted and released persons. Thirteen acquitted and released persons are currently awaiting relocation in Arusha.

76. Through its consistent approach of seeking consensual relocation outcomes, the Mechanism has continued to engage bilaterally with States that have indicated willingness to accept, in principle, one or more of these persons. In June 2016, the Mechanism assisted one acquitted person with his family reunification application to a European State, which was ultimately successful. Additionally, active negotiations regarding the relocation of one acquitted and one released person residing in Arusha are under way, with completion expected in the near future.

77. Notwithstanding these positive developments, in view of the totality of experience to date and the numbers of individuals concerned, it remains unlikely that this approach will lead to a comprehensive solution for all individuals concerned within the foreseeable future. Indeed, while each relocation process is unique and occurs at a different pace, it is noted that, between September 2014 and June 2016, no acquitted or released persons in Arusha were resettled. The Mechanism remains grateful to the Security Council and to individual Member States for their ongoing support of relocation efforts in order to resolve this longstanding challenge, which, with the passage of time, becomes increasingly urgent.

78. Given its mandate to operate as a small and lean institution, the Mechanism is limited in the amount of assistance it may provide to acquitted and released individuals. As of 1 July 2016, the Mechanism adopted a revised and more efficient approach to the upkeep of acquitted and released persons in Arusha, where a branch of the Mechanism is located. This approach provides an appropriate standard of living and additional independence to acquitted and released persons, while also offering significant cost savings. In other enforcement States, the Mechanism is seeking to strengthen the applicable legal framework with respect to persons released following service of sentence.

79. The Mechanism notes that this humanitarian challenge will exist until such time as all acquitted and released individuals are appropriately relocated or have died.

XI. Archives and records

80. In accordance with article 27 of its statute, the Mechanism has responsibility for the management, including preservation and access, of the archives of the Mechanism and the two International Tribunals, which shall be co-located with the respective branches of the Mechanism.

81. The archives of the two International Tribunals include materials concerning: investigations, indictments, and court proceedings; work relating to the detention of accused persons, the protection of witnesses, and the enforcement of sentences; and documents from States, other law enforcement authorities, international and non-governmental organizations, and the general public. The materials exist in both digital and physical format and consist of documents, maps, photographs, audiovisual recordings and objects. The Mechanism Archives and Records Section has been tasked with preserving these materials and facilitating the widest possible access to them, while ensuring the continued protection of confidential information, including information concerning protected witnesses.

82. During the reporting period, the Mechanism Archives and Records Section completed the transfer and accessioning of all physical records of the International Criminal Tribunal for Rwanda. The completion of this process, which began in September 2013, marks a significant milestone in the Mechanism's compliance with article 27 of its statute.

83. In total, 1,953 linear metres of physical records have been transferred to the archives in the Arusha branch. In accordance with established retention policies, approximately 40 per cent of the records of the International Criminal Tribunal that have been transferred to the Mechanism's Arusha branch are of temporary value, and the Mechanism Archives and Records Section will be responsible for the ongoing disposition of these records. The first set of these records will be due for destruction in early 2017, while the last will be retained until the end of 2046. The Mechanism will remain responsible for the management, including the preservation, arrangement, description and security of, as well as for access to, the 1,100 linear metres of records of the Tribunal that have been designated for permanent retention, as well as the records of archival value generated by the Mechanism.

84. In The Hague, the International Tribunal for the Former Yugoslavia has transferred over 41 per cent of its anticipated volume of physical records to the Mechanism, in line with the target to achieve complete transfer of earmarked records by the time of its closure. In the reporting period, the preparation of both physical and digital records has intensified, following an ongoing refresher training programme for managers and staff. The repository assumed by the Mechanism Archives and Records Section in 2015 is currently at 80 per cent capacity of its 1,450 linear metres of storage. Over 190 linear metres of records have been relocated and transferred to the repository during the current reporting period. An additional repository of Tribunal materials of an approximately equal size was transferred to the Mechanism's custody in September 2016. The repository is being renovated and prepared to receive transfers in January 2017. The total amount of records in the repositories of the Archives and Records Section is now over 1,737 linear metres.

85. The Mechanism Archives and Records Section has also completed the transfer of all digital records of the International Criminal Tribunal for Rwanda and approximately 80 per cent of the digital records of the International Tribunal for the Former Yugoslavia. Upon completion of the appraisal of these digital records, they will be incorporated into the Mechanism's digital preservation system, which will provide for the long-term integrity, reliability and usability of the digital archives of both Tribunals and of the Mechanism. The relevant testing phases of the digital preservation system have been successfully completed and it is expected that the system will be operational by the first quarter of 2017.

86. The public interface to access and search the judicial records of the International Criminal Tribunal for Rwanda and the Mechanism has been continuously updated throughout the reporting period: over 30,000 judicial records are currently available to the public through this interface. The Mechanism Archives and Records Section has continued to provide substantive and technical support for the development of a unified system for managing the judicial records of both Tribunals and the Mechanism, which is expected to become operational in both branches in early 2017.

87. In September 2016, the Mechanism presented its work at the quadrennial congress of the International Council on Archives in Seoul, where the Registrar of the Mechanism gave the inaugural keynote address. The Mechanism has confirmed its commitment to host several international archival meetings at the new facility in Arusha in 2017. In addition, the Mechanism has worked with the International Council on Archives on the implementation of its five-year Africa programme and has established a partnership with the Eastern and Southern African Management Institute. In this context the Mechanism provided on-site visits, expert advice and briefings to multiple groups of participants from all over Africa at no cost to the Organization.

88. As the archives are, by definition, records deemed to be of long-term to permanent value, their management will have to be ensured accordingly. As noted in the above-mentioned report of the Secretary-General, the management of the archives is one of the Mechanism's principal residual functions and, even after its other residual functions draw to a close, this particular function shall continue. The Secretary-General's Bulletin on record-keeping and the management of United

Nations archives (ST/SGB/2007/5) defines the archives of the United Nations as "records to be permanently preserved for their administrative, fiscal, legal, historical or informational value", regardless of form or medium.

XII. Cooperation of States

89. Pursuant to article 28 of the statute of the Mechanism, States are required to cooperate in relation to the investigation and prosecution of persons covered under the statute, as well as with orders and requests for assistance in relation to cases before the Mechanism. States are also required to respect the statute owing to its adoption by the Security Council pursuant to Chapter VII of the Charter of the United Nations. The Mechanism, like the two Tribunals, is dependent upon the cooperation of States.

90. The arrest and surrender of the remaining fugitives are a priority of the Mechanism. As described above, the Mechanism requires the full cooperation of States in relation to the ongoing fugitive-tracking operations being conducted by the Prosecutor, and it continues the practice of the International Criminal Tribunal for Rwanda by calling for the assistance of relevant States in this respect. As described above, the Mechanism relies on the cooperation of States for the enforcement of sentences. In addition, the cooperation of Turkey is necessary to resolve the situation concerning Judge Akay, as set forth above (see paras. 13 and 38).

91. The Mechanism continues to promote communication and cooperation with the Governments of Rwanda and the States of the former Yugoslavia. During the reporting period, the Mechanism has continued to discuss areas of mutual interest with Rwandan authorities. Representatives of the Mechanism, including the President, have also engaged with Government officials and met with victims groups from the States of the former Yugoslavia. To further collaboration between the Mechanism and the Government of Rwanda in relation to the legacy of the International Criminal Tribunal for Rwanda, in line with paragraph 23 of Security Council resolution 2256 (2015), the Mechanism's Kinyarwanda Unit, established in the beginning of 2016, has translated three trial judgments of the Tribunal into Kinyarwanda in the cases of *Ngirabatware*, *Nsengimana*, and *Gacumbitsi*, with work ongoing for the translation of additional judgments.

XIII. Assistance to national jurisdictions

92. The Mechanism routinely receives requests from national authorities or parties to national proceedings for assistance in relation to domestic proceedings concerning individuals allegedly implicated in the genocide in Rwanda or the conflicts in the former Yugoslavia. Furthermore, during the reporting period, the Mechanism received and considered requests to vary the protective measures of witnesses and disclose their testimony and evidence (as discussed in the section on "Judicial activities" above). Comprehensive information and guidance for those who wish to request assistance are available on the Mechanism's website.

93. The data concerning requests for assistance submitted to both branches of the Mechanism continues to be centralized into one repository. The branches also

continue to exchange best practices for the development of policies and training programmes with a view to maximizing operational efficiency and ensuring that the Mechanism provides effective assistance to national jurisdictions.

94. While it is not possible to fully foresee when, or how often, requests for assistance from national jurisdictions will arise in the future, it is expected that these activities will continue while national authorities continue to investigate and prosecute cases in domestic jurisdictions related to the genocide in Rwanda and the conflicts in the former Yugoslavia.

XIV. External relations

95. During the reporting period, various initiatives were undertaken to increase the Mechanism's visibility and to make its work more accessible to audiences worldwide.

96. The External Relations Office, comprising staff at both branches of the Mechanism, has continued to enhance public understanding of the Mechanism's mandate and structure. The Office has promptly responded to media queries on cases under the Mechanism's jurisdiction, delivered presentations to visitors and organized public events for representatives of the diplomatic community, academia and the general public. In addition, the External Relations Office has updated relevant information materials and produced new materials, such as a map of enforced sentences under the Mechanism's supervision and a judicial overview sheet.

97. The Mechanism's website remains an essential public information platform for users around the world, with 165,000 page views during the reporting period. During the reporting period, the External Relations Office also developed the Mechanism's social media platforms, while continuing its presence on YouTube. Information about the Mechanism is now available on Twitter, Facebook, LinkedIn and Flickr. In particular, since its launch in June 2016, the Twitter account has reached an audience of over 33,000. The Office has continued managing a separate Facebook account dedicated to the search for fugitives.

98. The Office continues to maintain the website of the International Tribunal for the Former Yugoslavia and the legacy website of the International Criminal Tribunal for Rwanda. The latter was enriched with a compendium webpage on the legacy of the International Criminal Tribunal. This page is a useful resource for accessing a selection of papers by leading practitioners and experts relating to the International Criminal Tribunal and its contributions to the development of international criminal law. Furthermore, the External Relations Office managed all social media platforms and the mini-websites of the two Tribunals.

99. The Mechanism continues to provide library services. The Arusha library, which is one of the premier international law research resources in East Africa, continues to be open to researchers and members of the public from the Great Lakes region and beyond. The library employs a targeted acquisition policy, acquiring both digital and physical reference materials based on its areas of specialization and on user requests. The library processed an average of 357 requests per month, including research requests and loans. In The Hague, the Library and Reference

Unit served both staff of the International Tribunal for the Former Yugoslavia and the Mechanism. In the reporting period, the Library addressed an average of 164 loans and research requests per month. Consolidation of the library collection and judgments collection and the preparation of book donations is ongoing.

100. The latest edition of the library's routinely updated bibliography was issued in November 2016 and has been expanded to include references to resources related to both Tribunals. It will continue to add value to the legacy of the Tribunals by assisting Mechanism staff and researchers to identify relevant resources and research materials related to the work of the Tribunals and the Mechanism.

XV. Audit reports of the Office for Internal Oversight Services

101. During the reporting period, the Mechanism has continued to benefit from regular audits by the OIOS and to implement its recommendations. Two audits were issued during the reporting period. The overall results were assessed as "satisfactory".

102. The first audit report, issued in June 2016, concerned the management of the Mechanism's archives and records. The audit focused on strategic planning and risk assessment and the regulatory framework. The overall results were "satisfactory", with all recommendations officially closed by OIOS before the report was published.

103. The second audit report, issued in August 2016, concerned the administrative support arrangements between the Mechanism and the International Tribunal for the Former Yugoslavia. The audit focused on the policies and procedures existing to guide administrative support arrangements between the Mechanism and the Tribunal, including "double-hatting"; whether the policies and procedures are implemented effectively; and whether there is reliability and integrity of operational information. The overall results were "satisfactory" and OIOS gave no recommendations.

104. The Mechanism continued to take steps in relation to the OIOS audit report of the provision of assistance to national jurisdictions by the International Tribunal for the Former Yugoslavia and the Mechanism, issued in November 2015, which contained two recommendations. The first required the development of a consolidated, comprehensive database of requests for assistance. This recommendation has been closed: the database is now fully operational in both branches. The second recommendation pertained to the encryption of electronically transmitted material to national authorities, and it has likewise been closed.

XVI. Conclusion

105. The Mechanism continues to strive to fully realize the mandate established by Security Council resolution 1966 (2010), crafting innovative approaches across the institution to do so flexibly and effectively. In achieving its goals, the Mechanism benefits from the support of the International Tribunal for the Former Yugoslavia, the Office of Legal Affairs and the Department of Management of the Secretariat, from the Governments of the United Republic of Tanzania, the Netherlands, Rwanda

and the States of the former Yugoslavia and from individual States Members of the United Nations. This support is crucial to the continued success of the Mechanism, which maintains its focus on carrying out its mandate in an efficient and cost-effective manner.

Enclosure 1

International Residual Mechanism for Criminal Tribunals: staffing[a]

	Number of staff by branch and organ					
Category	*Arusha branch*	*Hague branch*	*Chambers*[b]	*Office of the Prosecutor*	*Registry*[c]	*Mechanism overall*
All staff	159	170	28	64	237	329
Staff on continuous posts	114	55	8	28	133	169
Staff on General Temporary Assistance positions	46	114	20	36	104	160
International (Professional and Field Service)	89	90	21	49	109	179
Local (General Service)	70	80	7	15	128	150

[a] The data in the tables herein represents the number of staff employed as of 10 October 2016. It does not represent the full complement of approved posts and general temporary assistance funding. Such information can be found in the Mechanism budget for the 2016-2017 biennium (A/70/378) and General Assembly resolution 70/243 thereon.

[b] Chambers includes the Office of the President. Chambers staffing data excludes judges. In the Mechanism budget, Chambers staff are included in the Registry.

[c] Registry staff includes: Immediate Office of the Registrar, Mechanism Archives and Records Section, Witness Support and Protection, Conference Support Services, Language Support Services, Public Relations, Administration, and Security (including at the United Nations Detention Facility and United Nations Detention Unit).

	Geographical representation		
	Arusha branch	*Hague branch*	*Mechanism overall (Percentage)*
Nationalities	43	45	65
Geographical groups			
All staff			
Africa	116	7	123 (37)
Asia-Pacific	8	10	18 (5)
Eastern Europe	5	36	41 (12)
Latin America and Caribbean	2	3	5 (2)
Western European and Others	28	114	142 (43)
International staff (Professional and Field Service)			
Africa	46	3	49 (27)
Asia-Pacific	8	6	14 (8)
Eastern Europe	5	15	20 (11)
Latin America and Caribbean	2	2	4 (2)
Western European and Others	28	64	92 (51)
Local (General Service)			
Africa	70	4	74 (49)
Asia-Pacific	0	4	4 (3)

	Geographical representation		
	Arusha branch	*Hague branch*	*Mechanism overall (Percentage)*
Eastern Europe	0	21	21 (14)
Latin America and Caribbean	0	1	1 (1)
Western European and Others	0	50	50 (33)

Africa Group: Benin; Burundi; Cameroon; Côte d'Ivoire; Democratic Republic of the Congo; Ethiopia; Gambia; Ghana; Guinea; Kenya; Liberia; Mali; Niger; Nigeria; Rwanda; Senegal; South Africa; Sudan; Uganda; United Republic of Tanzania; Zimbabwe.

Asia-Pacific Group: China; Cyprus; Fiji; Indonesia; Lebanon; Malaysia; Nepal; Pakistan; Philippines; Republic of Korea.

Eastern European Group: Albania; Bosnia and Herzegovina; Bulgaria; Croatia; Latvia; Poland; Romania; Russian Federation; Serbia; The former Yugoslav Republic of Macedonia; Ukraine.

Latin America and Caribbean Group: Bolivia (Plurinational State of); Brazil; Cuba; Dominican Republic; Jamaica.

Western European and Others Group: Australia; Austria; Belgium; Canada; Denmark; Finland; France; Germany; Greece; Ireland; Italy; Netherlands; New Zealand; Spain; Sweden; Turkey; United Kingdom of Great Britain and Northern Ireland; United States of America.

	Gender representation		
	Arusha branch	*Hague branch*	*Mechanism overall (Percentage)*
Professional staff (all levels)			
Male	28	25	53 (39)
Female	17	65	82 (61)
Professional staff (P-4 and above)			
Male	15	8	23 (49)
Female	3	21	24 (51)

	Staff by organ		
	Arusha branch	*Hague branch*	*Mechanism overall*
Chambers (including Office of the President)	6	22	28
Office of the Prosecutor	20	44	64
Registry:	134	103	237
Immediate Office of the Registrar	14	10	24
Archives and Records Section	14	12	26
Witness Support and Protection	11	3	14
Conference Support Services	0	9	9
Language Support Services	4	16	20
Public Relations	0	5	5
Administration	31	34	65
Security (including the United Nations Detention Facility and the United Nations Detention Unit)	60	14	74

Enclosure 2

International Residual Mechanism for Criminal Tribunals: appropriations and expenditures for the biennium 2016-2017

Appropriations for the biennium 2016-2017 (net of staff assessment), by branch and organ

	Chambers	*Office of the Prosecutor*	*Registry*	*Liabilities: judges of the International Criminal Tribunal for Rwanda and after-service health insurance*	*Mechanism*
Arusha					
Post		5 378 000	24 855 500		30 233 500
Non-post[a]	2 346 600	4 430 200	35 233 300		42 010 100
Subtotal	**2 346 600**	**9 808 200**	**60 088 800**		**72 243 600**
The Hague					
Post		1 925 300	8 799 100		10 724 400
Non-post	3 806 500	5 883 700	30 767 000		40 457 200
Subtotal	**3 806 500**	**7 809 000**	**39 566 100**		**51 181 600**
Overall					
Post		7 303 300	33 654 600		40 957 900
Non-post	6 153 100	10 313 900	66 000 300	3 520 100	85 987 400
Total	**6 153 100**	**17 617 200**	**99 654 900**	**3 520 100**	**126 945 300**

[a] Non-post includes all commitment items other than posts, such as general temporary assistance, travel and rental of premises.

Expenditures (net of staff assessment) as at 8 November 2016 (per Umoja), by branch and organ

	Chambers	*Office of the Prosecutor*	*Registry*	*Liabilities: judges of the International Criminal Tribunal for Rwanda and after-service health insurance*	*Mechanism*
Arusha					
Post		2 463 750	7 482 445		9 946 195
Non-post	477 403	769 834	9 248 893		10 496 130
Subtotal	**477 403**	**3 233 584**	**16 731 338**		**20 442 325**

	Chambers	*Office of the Prosecutor*	*Registry*	*Liabilities: judges of the International Criminal Tribunal for Rwanda and after-service health insurance*	*Mechanism*
The Hague					
Post		1 042 859	4 035 340		5 078 199
Non-post	1 470 258	3 131 743	13 425 054		18 027 056
Subtotal	**1 470 258**	**4 174 603**	**17 460 394**		**23 105 255**
Overall					
Post		3 506 609	11 517 785		15 024 394
Non-post	1 947 661	3 901 578	22 673 947	989 187	29 512 373
Total	**1 947 661**	**7 408 187**	**34 191 732**	**989 187**	**44 536 766**

Percentage of biennial budget expended as at 8 November 2016, by branch and organ

	Chambers	*Office of the Prosecutor*	*Registry*	*Liabilities: judges of the International Criminal Tribunal for Rwanda and after-service health insurance*	*Mechanism*
Arusha					
Post		45.8	30.1		32.9
Non-post	20.3	17.4	26.3		25.0
Subtotal	**20.3**	**33.0**	**27.8**		**28.3**
The Hague					
Post		54.2	45.9		47.4
Non-post	38.6	53.2	43.6		44.6
Subtotal	**38.6**	**53.5**	**44.1**		**45.1**
Overall					
Post		48.0	34.2		36.7
Non-post	31.7	37.8	34.4	28.1	34.3
Total	**31.7**	**42.1**	**34.3**	**28.1**	**35.1**

Annex II

[Original: English and French]

Progress report of Serge Brammertz, Prosecutor of the International Residual Mechanism for International Criminal Tribunals, for the period from 16 May to 15 November 2016

I. Overview

1. The Prosecutor submits this ninth progress report pursuant to Security Council resolution 1966 (2010), covering developments between 16 May 2016 and 15 November 2016.

2. During the reporting period, the Mechanism Office of the Prosecutor focused on three priorities: (a) the expeditious completion of trials and appeals; (b) locating and arresting fugitives; and (c) assistance to national jurisdictions. The Office continues to rely on the full cooperation of States to successfully carry out its mandate in these areas.

3. The Office of the Prosecutor continued to engage in intense trial and appeal work during the reporting period. Pretrial proceedings in the *Stanišić and Simatović* case continued following the retrial ordered by the Appeals Chamber of the International Tribunal for the Former Yugoslavia on 15 December 2015. The Office also continued work on appeal proceedings in two cases (*Karadžić and Šešelj*) following the issuance of trial judgments by the International Tribunal on 24 March and 31 March 2016, respectively. In addition to this trial and appeal activity in The Hague, the Office processed a high volume of other litigation at both branches arising out of completed cases.

4. Significant efforts to locate and arrest the eight remaining fugitives indicted by the International Criminal Tribunal for Rwanda continued during the reporting period. The Office of the Prosecutor completed a comprehensive review of its tracking activities and identified challenges to its work. Specific strategies have been designed and put in place for each of the eight fugitives. In addition, the Prosecutor engaged in diplomatic and professional outreach to improve awareness of the Office's tracking efforts and to build support, including strengthening links with organizations such as the Africa Prosecutors Association and the International Criminal Police Organization (INTERPOL).

5. Regarding national prosecutions of war crimes committed in Rwanda, the Office of the Prosecutor, within existing resources, continued to monitor cases referred to Rwandan and French authorities, to provide national justice sectors with access to the Mechanism's evidence collection and to support national accountability for these crimes. A notable development during the reporting period was the decision of 4 October 2016 of the Appeals Chamber of the Mechanism in the *Uwinkindi* case, confirming the decision of the Mechanism's Trial Chamber to reject the accused's request to revoke the referral of his case to Rwanda.

6. Regarding national prosecutions of war crimes committed in the former Yugoslavia, the Office of the Prosecutor notes with concern the intensifying

negative impact of the political environment on domestic war crimes justice. Progress continues to be made in adjudicating war crimes cases, particularly in Bosnia and Herzegovina, and all prosecution services have confirmed their commitment to independent and impartial justice. However, it is clear that politics, both domestic and regional, has been hindering regional judicial cooperation and undermining trust in judicial accountability, and increasingly posing a risk to the independence of the judiciary.

7. In managing its work, the Office of the Prosecutor continued to be guided by the views of the Security Council and its requests, as set forth in, inter alia, paragraphs 18, 19 and 20 of its resolution 2256 (2015). The Office, in conjunction with the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia, continued to implement the "one office" policy to further streamline operations and reduce costs by effectively integrating staff and resources across the Offices. Since 1 March 2016, staff and resources have been flexibly deployed across both institutions in "double-hatting" arrangements as and when needed based on operational requirements, in accordance with the directions of the Security Council set forth in resolution 1966 (2010). The Office also utilized rosters and internal transfer arrangements to efficiently recruit limited numbers of temporary staff as necessary to undertake its ad hoc functions. Finally, consistent with Security Council resolution 1966 (2010) and article 6 of the Transitional Arrangements, during the reporting period the Office of the Prosecutor continued the coordinated transition of so-called "other functions" from the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia.

II. Trial and appeals

A. Overview

8. During the reporting period, the Office of the Prosecutor continued its work on one trial (*Stanišić and Simatović*) and two appeals proceedings (*Karadžić and Šešelj*) arising out of cases transferred from the International Tribunal for the Former Yugoslavia pursuant to the statute of the Mechanism and the transitional arrangements. This ad hoc judicial activity is temporary in nature. It is expected that the Office will conduct further appeal proceedings, if any, in the *Mladić* case following the anticipated rendering of the trial judgment by the Tribunal in November 2017.

B. Update on the progress of trials

9. On 15 December 2015, the Appeals Chamber partially granted the appeal of the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia in the *Stanišić and Simatović* case, revoked the Trial Chamber's judgment and ordered the case to be retried on all counts. Pursuant to the statute of the Mechanism and the transitional arrangements, the retrial is being conducted by the Mechanism.

10. On 3 June 2016, the pretrial judge issued the pretrial workplan for this case, which foresees that the pretrial conference will be held in the second half of February 2017, with the trial to commence sometime afterwards. The Office of the Prosecutor has been undertaking the necessary activities in accordance with the

pretrial workplan and submitted the required filing by the established deadlines. In particular, notwithstanding the significant amount of work required in a short time period, the Prosecution submitted its consolidated pretrial brief and exhibit and witness lists on 5 September 2016.

C. Update on the progress of appeals

1. Karadžić

11. On 24 March 2016, the Trial Chamber of the Yugoslavia Tribunal unanimously convicted Radovan Karadžić of genocide, crimes against humanity and war crimes, and sentenced him to a term of imprisonment of 40 years.

12. On 22 July 2016, the Office of the Prosecutor filed its notice of appeal against the trial judgment. The Office identified four grounds of appeal, including against the acquittal for genocide in 1992 and the imposed sentence. The defence also filed its notice of appeal, which set out 50 grounds of appeal.

13. The next step in the proceeding will be the filing of appeal briefs by both parties, which are due on 5 December 2016.

2. Šešelj

14. On 31 March 2016, the Trial Chamber of the International Tribunal for the Former Yugoslavia, by majority, acquitted Vojislav Šešelj on all counts of the indictment.

15. The Office of the Prosecutor filed its notice of appeal on 2 May 2016, and filed its appeal brief on 18 July 2016. The Office puts forward two grounds of appeal. Ground 1 avers that the Trial Chamber erred in law by failing to deliver a reasoned judgment, as the Trial Chamber failed to provide sufficient reasons for key conclusions, failed to address Prosecution arguments and clearly relevant evidence, failed to adjudicate essential issues in the case and did not explain the substantive law it applied. Ground 2 argues that the Trial Chamber erred in fact by acquitting the accused, as no reasonable trial chamber could have found, on the basis of the entirety of the evidence, the accused not guilty of all of the charges.

16. Šešelj received the translation of the appeal brief of the Prosecution on 28 September 2016. Šešelj has until 19 December 2016 to file a response.

D. Cooperation with the Office of the Prosecutor

17. The Office of the Prosecutor continues to rely on the full cooperation of States to successfully complete its mandate. The Office's access to documents, archives and witnesses is critical to the ongoing trial and appeal proceedings of the Mechanism.

1. Cooperation with Rwanda and the States of the former Yugoslavia

18. During the reporting period, cooperation by Bosnia and Herzegovina, Croatia, Rwanda and Serbia with the Office of the Prosecutor remained satisfactory. The Office will require assistance in relation to trial, appeal, review and contempt proceedings, including the provision of evidence and access to witnesses, and it

fully expects that its requests for assistance will be promptly and adequately processed. During his mission to Belgrade, the Prosecutor raised with Serbian authorities the Office's expectation that all responses to requests for assistance will be as comprehensive as possible and prepared in a spirit of providing maximum cooperation.

2. Cooperation with other States and organizations

19. Cooperation and support from States outside the former Yugoslavia and Rwanda, as well as from international organizations, remains integral to the successful completion of Mechanism activities. There is a continuing need for assistance in accessing documents, information and witnesses, as well as in matters related to locating and arresting fugitives and witness protection. The Office of the Prosecutor once again acknowledges the support it has received during the reporting period from States Members of the United Nations and international organizations, including the United Nations and its agencies, the European Union, the North Atlantic Treaty Organization, the Organization for Security and Cooperation in Europe and INTERPOL.

20. The international community continues to play an important role in providing incentives for States to cooperate with the Mechanism and undertake national prosecutions of war crimes. The European Union's policy of conditionality, linking membership progress to full cooperation with the Mechanism, remains a key tool for ensuring continued cooperation with the Mechanism and consolidating the rule of law in the former Yugoslavia. Increasingly, assistance is also needed to support the national prosecution of war crimes cases in Rwanda and the States of the former Yugoslavia.

III. Fugitives

21. As of the end of the reporting period, eight fugitives indicted by the International Criminal Tribunal for Rwanda remain at large. The Office of the Prosecutor continued its efforts to locate and arrest the three fugitives whose cases will be tried by the Mechanism: Félicien Kabuga, Protais Mpiranya and Augustin Bizimana. The Office also continued to search for information on the whereabouts of the five fugitives who are currently expected to be brought to trial in Rwanda following their arrest: Fulgence Kayishema, Charles Sikubwabo, Aloys Ndimbati, Ryandikayo and Pheneas Munyarugarama.

22. During the reporting period the Office of the Prosecutor completed its previously-announced overall review of its tracking efforts to date. As a result of that review, a number of challenges were identified, and steps are now being taken to resolve these issues. As one example, the Office identified the need to strengthen its fugitive-related analytical capacities, which has now been addressed through the recruitment, from INTERPOL, of a criminal analyst with relevant expertise. The Office further developed concrete strategies for each of the eight remaining fugitives, which are now being implemented. The Office of the Prosecutor expects that these and other measures will improve the efficiency and effectiveness of its work to locate and arrest the remaining fugitives.

23. The Office also strengthened its public communications and outreach. The Prosecutor undertook extensive efforts to raise awareness of the Office's mandate to locate and arrest the remaining eight fugitives, in particular with its professional counterparts in Africa, including the Africa Prosecutors Association and INTERPOL. As part of these efforts, the Prosecutor will attend the upcoming annual meeting of the Africa Prosecutors Association and brief national chief prosecutors on the Office's work and on the assistance that is needed from national justice authorities.

24. State cooperation will be essential to successfully track and arrest the remaining fugitives. The Office of the Prosecutor appreciates the assistance already provided by the Member States, including the United States War Crimes Rewards Program. The Office welcomes offers of assistance from additional States. The Office is discussing with relevant African and European States support for the Office's fugitive tracking efforts and cooperation in conducting arrests.

IV. Assistance to national war crimes prosecutions

25. National prosecutions are now essential to the achievement of greater justice for the victims of war crimes, crimes against humanity and genocide committed in the former Yugoslavia and Rwanda. Consistent with the completion strategies of both Tribunals, Security Council resolution 1966 (2010), the statute of the Mechanism and Council resolution 2256 (2015), the Office of the Prosecutor is mandated to assist and support effective national prosecutions of these crimes. In the affected countries, the effective prosecution of the crimes committed is fundamental in order to build and sustain the rule of law, establish the truth of what occurred and promote reconciliation. Third-party States are also undertaking prosecutions against suspects who are present in their territory for crimes committed in Rwanda and the former Yugoslavia.

26. The Office continued its efforts, within existing resources, to monitor, support and advise national judicial authorities prosecuting war crimes cases arising out of the conflicts in Rwanda and the former Yugoslavia. The Office maintains an ongoing dialogue with counterparts, and undertakes a range of initiatives to assist and build capacity in national criminal justice sectors.

A. War crimes committed in Rwanda

27. Five cases referred by the International Criminal Tribunal for Rwanda under rule 11bis of the Rules of Procedure and Evidence are currently being processed in the national courts of France and Rwanda. The cases against Wenceslas Munyeshyaka and Laurent Bucyibaruta were referred to France in 2007. Jean Uwinkindi, Bernard Munyagishari and Ladislas Ntaganzwa were transferred to Rwanda in 2012, 2013 and 2016, respectively. All proceedings remain ongoing.

28. During the reporting period, there was important litigation concerning the implementation of international fair trial standards in war crimes cases prosecuted in Rwanda. In the *Uwinkindi* case, the Appeals Chamber of the Mechanism issued its decision on 4 October 2016, confirming the Trial Chamber's decision to reject the accused's application to revoke the referral of the case to Rwanda. The Trial and

Appeals Chambers of the Mechanism considered fair trial issues raised by the accused, such as the provision of legal aid and the quality of defence counsel in Rwanda, and reaffirmed that conditions exist for a fair trial in Rwandan courts. Separately, Rwandan requests for the extradition of war crimes suspects were litigated during the reporting period in third-party States such as the Netherlands and the United Kingdom of Great Britain and Northern Ireland. The Netherlands extradited two suspects. In the United Kingdom, the extradition request was refused in the first-instance decision, and that decision is now under appeal. The Office of the Prosecutor hopes the Mechanism's decisions will be given due consideration in extradition and related proceedings.

29. It should be emphasized that all those suspected of committing crimes during the Rwandan genocide must be brought to justice, whether in Rwanda or another State. Consistent with the principle of complementarity and national ownership of post-conflict accountability, prosecutions by the Rwandan justice sector are in principle the most advantageous accountability mechanism, as long as international due process and fair trial standards are implemented. In this regard, the Office of the Prosecutor encourages the international community to continue its efforts to support and strengthen the Rwandan criminal justice sector by providing financial assistance and capacity-building, as needed.

1. Cases referred to France

30. Wenceslas Munyeshyaka, an ordained Catholic priest, was indicted by the International Criminal Tribunal for Rwanda in July 2005 on four counts of genocide, rape as a crime against humanity, extermination as a crime against humanity and murder as a crime against humanity. The indictment was referred by the Rwanda Tribunal to France for trial on 20 November 2007. As previously reported, the investigation by French authorities in the *Munyeshyaka* case has not resulted in charges being brought against the suspect. On the recommendation of the Paris Public Prosecutor, on 2 October 2015, the *Juge d'instruction* confirmed the *non-lieu* dismissal of the case before trial, which the civil parties have appealed. A date for the appeal hearing has not yet been set.

31. Laurent Bucyibaruta, the prefect of Gikongoro Prefecture, was indicted by the International Criminal Tribunal for Rwanda in June 2005 on six counts of direct and public incitement to commit genocide, genocide, complicity in genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. The indictment was referred by the International Criminal Tribunal for Rwanda to France for trial on 20 November 2007. The investigation by French authorities is under way. It is understood that investigations are nearing completion, and that a decision by the *Juge d'instruction* whether to proceed to trial can be expected sometime in 2017.

32. The Prosecutor visited Paris on 18 May 2016 to discuss the status of these cases with relevant French authorities, including representatives of the public prosecution, the Ministry of Justice and the Ministry of Foreign Affairs. Although confirmed indictments in both cases were referred by the International Criminal Tribunal to France in 2007, today, more than nine years later, neither case has gone to trial or been closed. French authorities recognized that this cannot be considered satisfactory, and identified insufficient resources in the specialized war crimes unit

of the *Tribunal de Grande Instance* as a key challenge. The Office of the Prosecutor welcomes the recent decision by French authorities to strengthen the capacities of the specialized war crimes unit, including funding for one additional magistrate and six additional investigators.

2. Cases referred to Rwanda

33. Jean Uwinkindi, a pastor in the Pentecostal Church, was indicted by the International Criminal Tribunal for Rwanda in September 2001 on three counts of genocide, conspiracy to commit genocide and extermination as a crime against humanity. He was transferred to Rwanda for trial on 19 April 2012, and the trial commenced on 14 May 2012. On 30 December 2015, the High Court issued its trial judgment, convicting Uwinkindi and sentencing him to life imprisonment. Appeals proceedings are now underway.

34. Bernard Munyagishari, a local leader in the *Mouvement Révolutionaire National pour le Développement* party, was indicted by the International Criminal Tribunal for Rwanda in September 2005 on five counts of conspiracy to commit genocide, genocide, complicity in genocide, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 24 July 2013. Trial proceedings are now under way.

35. Ladislas Ntaganzwa, burgomaster of Nyakizu commune, was indicted by the International Criminal Tribunal for Rwanda in June 1996, with an amended indictment charging him with five counts of genocide, direct and public incitement to commit genocide, extermination as a crime against humanity, murder as a crime against humanity and rape as a crime against humanity. He was transferred to Rwanda for trial on 20 March 2016. His case remains in the pretrial phase, with the filing of the indictment expected in the near future.

B. War crimes committed in the former Yugoslavia

1. Regional judicial cooperation

36. Judicial cooperation between the States of the former Yugoslavia is essential to ensure that those responsible for war crimes are held accountable. Many suspects may not be present in the territory where they are alleged to have committed the crimes and cannot be extradited to the territorial State for prosecution. The Office of the Prosecutor of the International Tribunal for the Former Yugoslavia previously reported, in its twenty-fourth completion strategy report (S/2016/454), that the political environment, particularly at the regional level, was increasingly difficult and hindering the justice process. Unfortunately, during the reporting period political trends in the region regarding war crimes justice continued moving in a negative direction. Ethnic tensions were aggravated, and regional diplomatic relations significantly worsened, particularly between Croatia and Serbia, and Bosnia and Herzegovina and Croatia. In parallel, there continued to be prominent examples in the public sphere of the glorification of war criminals, denial of crimes and attempts at historical revisionism.

37. Two examples from the reporting period demonstrate the negative impact the difficult political environment is having on regional judicial cooperation. As previously reported, the policies of the Croatian Government continue to block

regional cooperation between prosecutors on war crimes cases, including with respect to category II cases transferred by the Office of the Prosecutor to national counterparts. Similarly, at a time of increased diplomatic confrontations between the Governments of Croatia and Serbia, the Serbian War Crimes Prosecutor's Office had to decline to attend the tenth annual Regional Conference of War Crimes Prosecutors. The Serbian delegation's non-participation in this important working meeting, for the first time in 10 years, sent a troubling signal. These and other negative developments not only undermine regional cooperation, but unavoidably create the appearance that the independence and impartiality of the judiciary in war crimes cases is at risk from political influence.

38. Authorities in the States of the former Yugoslavia should take urgent steps to mitigate and reverse this situation. The Office of the Prosecutor calls upon all political and Government officials in the region to act responsibly and to refrain from politicizing war crimes proceedings. Respect for judicial independence requires that officials not only express a commitment to accountability, but put that commitment into regular practice. Equally, it is incumbent upon national authorities to swiftly undertake steps to rebuild and reinforce trust in judicial accountability for war crimes, particularly trust in the criminal justice sectors of neighbouring countries. The Office of the Prosecutor stands ready to support initiatives by the respective countries to improve mutual trust in domestic accountability mechanisms and to move regional judicial cooperation closer towards European standards.

2. Bosnia and Herzegovina

39. The Office of the Prosecutor is pleased to note that in Bosnia and Herzegovina, positive trends in national prosecutions continued during the reporting period. Notable developments over the last year include the filing of indictments in complex cases such as the *Mahmuljin, Merkez et al.* and *Tintor* cases, and important prosecutions of conflict-related sexual violence crimes. While a large backlog of cases remains and previously-reported issues have not been fully addressed, it should be recognized that the Prosecutor's Office of Bosnia and Herzegovina has taken important steps towards meeting the public's expectations for expeditious and effective justice for war crimes. These results demonstrate again that national prosecutions, appropriately supported by international partners, can meaningfully advance accountability, including in the most complex cases. The Office will continue working with the Prosecutor's Office of Bosnia and Herzegovina to achieve further progress in accountability for war crimes, including on the remaining so-called "rules of the road" cases initially reviewed by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia, which have been jointly identified as an important priority for action.

40. During the reporting period, the Chief Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina was suspended from duty while disciplinary and criminal proceedings against him are ongoing. The Acting Chief Prosecutor, who previously served as the Head of the Special Department for War Crimes, has demonstrated her strong commitment to continuing reforms and improvements in her Office, including implementing recommendations from the recent expert report of the Organization for Security and Cooperation in Europe on its work. The Office of the Prosecutor looks forward to its continuing close cooperation with the Acting Chief

Prosecutor and her staff. In this regard, it has been agreed to intensify discussions on training and capacity needs, and, in the context of the national war crimes strategy, to hold more trilateral meetings between the Prosecutor's Office of Bosnia and Herzegovina, victims associations and the Office of the Prosecutor of the Mechanism.

41. While progress is being made in judicial accountability, the political environment and the mindset in Bosnia and Herzegovina related to war crimes justice remain of significant concern. The Office of the Prosecutor strongly condemns the recent decision of the National Assembly of the Republika Srpska to decorate Biljana Plavšić, Momčilo Krajišnik and Radovan Karadžić. Plavšić and Krajišnik are convicted war criminals, while Karadžić was recently found guilty at trial by the International Tribunal for the Former Yugoslavia for genocide, crimes against humanity and war crimes, and sentenced to 40 years imprisonment. These decorations followed other recent acts by officials of the Republika Srpska, such as naming a student dormitory after Karadžić on the eve of the judgment against him, and promoting the denial and revisionism of judicially established atrocities, including the infamous violent events that took place in Markale in 1994 and 1995 and in Tuzla in 1995. These acts represent the continued denial of the facts established by international and domestic courts. Even more, they are aimed at promoting a false version of the region's recent history.

42. The Office of the Prosecutor must also express its concerns with the negative reactions by some officials in Bosnia and Herzegovina and Croatia to the recent arrests of 10 individuals suspected of war crimes in the Orašje municipality. From the information available, all indications are that these arrests mark a positive development that should be welcomed. This case appears to be complex, as it involves both superiors and their subordinates who are suspected of responsibility for crimes against humanity and war crimes. Recognizing the real risk that the suspects could flee to another territory from which they could not be extradited, the arrest operation would also appear to be fully justified. In this context, it is regrettable that some officials immediately made unsubstantiated allegations of selective justice and characterized the arrests as an attack against the Croatian people. The judiciary must act independently of political influence, and judicial measures such as arrests must remain confidential from political institutions. The Office of the Prosecutor will continue to monitor this case and related developments, and report, as appropriate.

3. Croatia

43. During the reporting period limited progress was made by Croatian authorities in addressing outstanding issues previously reported on. In a separate development, the convicting trial judgment in the *Glavaš* case, a category II case previously referred by the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia to the State Attorney's Office of Croatia, was revoked by the Croatian Supreme Court and remanded for retrial.

44. As previously reported, the Prosecutor's Office of Bosnia and Herzegovina has sought the cooperation of Croatian authorities in processing a number of category II case files. Two cases were previously transferred to the State Attorney's Office of Croatia. In one case, a decision was taken to open the investigation in June 2016.

With regard to that case, during the reporting period the Office of the Prosecutor of the Mechanism provided Croatian counterparts with 778 documents, comprising 9,146 pages and 9 audio/visual files, in response to requests for assistance. The other case remains in the pre-investigative phase. The State Attorney's Office cancelled a planned meeting to discuss and resolve challenges in that case. The Office of the Prosecutor encourages the State Attorney's Office to ensure that these category II case files are processed and prosecuted as soon as possible, and reiterates its offer to provide support as may be requested.

45. Separately, the Prosecutor's Office of Bosnia and Herzegovina, in mid-2015 and early-2016, respectively, submitted mutual legal assistance requests to the Croatian Ministry of Justice in relation to two other category II case files. These important requests remain pending as of the end of the reporting period due to the policy of the Government of Croatia not to provide judicial cooperation in certain war crimes cases. The failure of the Croatian Ministry of Justice to appropriately process these requests has obstructed further judicial proceedings in Bosnia and Herzegovina. The Office of the Prosecutor urges Croatian authorities to promptly review and revise this policy, and to ensure that they are providing full cooperation to the national judiciaries in the region prosecuting war crimes.

46. In June 2016, the Supreme Court of Croatia quashed the trial judgment convicting Branimir Glavaš for war crimes (torture and murder) against civilians and ordered a retrial on the charges. This category II case file was transferred to the Croatian authorities in 2006, and the trial judgment convicting the accused was issued in 2009. The Supreme Court, following remand of the case by the Constitutional Court in 2015, found that the Trial Court should have applied the law of international armed conflict to the crimes, rather than the law applicable in non-international armed conflict. Neither the decision of the Supreme Court nor that of the Constitutional Court called into question the evidence previously found to establish the accused's guilt. The Office of the Prosecutor hopes that the retrial will be expeditiously completed.

47. The Office of the Prosecutor will continue to monitor these matters and hopes to be able to report progress in the future.

4. Serbia

48. War crimes justice in Serbia is at a crossroads. During the reporting period, there was limited progress in war crimes prosecutions by the Serbian War Crimes Prosecutor's Office, with only a small number of indictments filed against low-level perpetrators. The acquittal in the *Gradiška* case further raised concerns about quality control of the Office's work. The limited results in 2016 can be attributed, in part, to the absence of formally appointed leadership in the Office. More positively, the Office of the Prosecutor of the Mechanism notes that judicial cooperation, particularly with authorities in Bosnia and Herzegovina, continued during the reporting period, and that the previously-reported Srebrenica indictment was finally confirmed.

49. On 20 February 2016, the Serbian Government adopted its national strategy for the prosecution of war crimes for the period 2016-2020. The strategy expresses the Government's commitment to accountability for war crimes, regardless of the

nationality, ethnicity, religion or status of the perpetrator or victim. The strategy further establishes important goals that should significantly improve the efficiency of war crimes justice in Serbia, including supporting the judiciary and improving societal acceptance of prosecuting war crimes. In addition, on 18 July 2016, Serbia opened negotiations on chapter 23 (judiciary and fundamental rights) of the European Union acquis, and is now expected to implement its chapter 23 action plan, which foresees, inter alia, achieving similar goals as set forth in the strategy.

50. Nevertheless, at the same time, long-standing issues remain unresolved, and there has been limited evidence that the strategy and action plan are being implemented. As discussed in the twenty-ninth completion strategy report of the International Tribunal for the Former Yugoslavia (S/2016/976), Serbia has failed to cooperate by failing to arrest three indictees for whom arrest warrants were issued in January 2015. Furthermore, the post of Chief War Crimes Prosecutor was unfilled as of the end of the reporting period. Additional staff and resources for the Serbian War Crimes Prosecutor's Office, as foreseen in the strategy, have not yet been provided, nor have training and capacity-building programmes been initiated. The Ministry of Interior has not yet produced its report on the Special Investigative Service for War Crimes, as foreseen in the strategy, and the head of that entity was unexpectedly replaced during the reporting period. It will be extremely difficult to achieve progress in the expeditious and effective processing of war crimes cases in Serbia if the steps identified in the strategy and action plan to support that goal are not implemented.

51. Similarly, the *Djukić* case, raised in the last four reports of the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia, remained unresolved as of the end of the reporting period. The enforcement in Serbia of the war crimes conviction issued by the court of Bosnia and Herzegovina in this case, by applying existing legislation, would be an important step towards European standards in judicial cooperation. The next scheduled court hearing is expected shortly after the end of the reporting period. The Office of the Prosecutor will report on any developments.

52. More broadly, the political climate and the mindset in Serbia remain unfavourable to war crimes justice. Denial of crimes and glorification of war criminals continued. During the reporting period, officials attempted to rehabilitate Slobodan Milošević, and an initiative was launched to build a monument to him. The former Chief War Crimes Prosecutor was publicly labelled as unpatriotic and accused of selectively prosecuting Serbs by a member of the board of the Belgrade Bar Association. There are also developing trends, which build upon the denial of crimes, to promote a false version of history.

53. The Office of the Prosecutor raised its concerns with Serbian authorities during open and constructive discussions in Belgrade. Serbian authorities acknowledged the Office's assessment, and expressed regret that there had not been more positive developments during the reporting period. It was agreed that relationships between the Office and relevant ministries should be strengthened, and Serbian authorities underlined their determination to demonstrate immediate action. In this regard, the Office of the Prosecutor welcomes the Prime Minister's recent public statement that the Government would take a decision on the appointment of the Chief War Crimes Prosecutor shortly after the end of the reporting period. The

Office of the Prosecutor will continue to monitor developments, and will report on any further progress in its briefing to the Security Council.

C. Access to information and evidence

54. With the closure of the International Criminal Tribunal for Rwanda and the approaching completion of the mandate of the International Tribunal for the Former Yugoslavia, further accountability for crimes committed in Rwanda and the former Yugoslavia now depends on national justice sectors. The Office of the Prosecutor seeks to support national judicial authorities prosecuting these crimes, particularly through the provision of access to evidence and information.

55. The Office possesses extensive evidence and invaluable expertise that can greatly benefit national justice efforts. The evidence collection related to the crimes committed in the former Yugoslavia comprises more than nine million pages of documents and thousands of hours of audio and video records, most of which were not introduced into evidence in any proceeding of the Tribunal and are thus only available from the Office of the Prosecutor. The Rwanda-related evidence collection comprises more than one million pages of documents. The Office's staff have unique insight into the crimes and the cases that can assist national prosecutors to prepare and prove their indictments.

56. During the reporting period, the Office of the Prosecutor continued to receive a high volume of requests for assistance from national judiciaries and international organizations. There were two notable developments. First, the Office of the Prosecutor increased its cooperation with the Kosovo Specialist Prosecutor's Office following the latter's formal establishment a few months ago. Second, the Office continued to strengthen its cooperation with Montenegrin authorities prosecuting war crimes. The staff of the Office of the Prosecutor participated in a training for Montenegrin prosecutors, and the Office hosted its Montenegrin counterparts on two working visits during the reporting period.

57. In relation to Rwanda, the Office of the Prosecutor received seven requests for assistance from two Member States and one international organization. All requests have been processed. In total, the Office handed over 6,930 pages of documentation. In addition, the Office filed submissions in relation to one request for variation of witness protective measures, which concerned a proceeding in France.

58. In relation to the former Yugoslavia, the Office of the Prosecutor received 160 requests for assistance from eight Member States and three international organizations. Ninety-four requests for assistance were submitted by authorities in Bosnia and Herzegovina, two were from Serbia and 50 were from Croatia. In total, the Office handed over 3,480 documents comprising 46,499 pages and 60 audio/visual files. In addition, the Office filed submissions in relation to 16 requests for variation of witness protective measures, one of which concerned a proceeding in Serbia and 15 of which concerned proceedings in Bosnia and Herzegovina.

59. For the last eight years, the European Union and the International Tribunal for the Former Yugoslavia have organized a joint training project for national prosecutors and young professionals from the States of the former Yugoslavia. The project has been a central component of the strategy of the Office of the Prosecutor of the International Tribunal to strengthen the capacity of national criminal justice

systems in the States of the former Yugoslavia to handle war crimes cases. The young professionals component of the project terminated at the end of 2015, while the visiting professionals component of the project will terminate at the end of 2016.

60. The Office of the Prosecutor is pleased to report that following the unanimous request from national prosecution services in the region, the European Union has now agreed to extend both components of the project for another two-year period. The project will also be transitioned from the International Tribunal for the Former Yugoslavia to the Office of the Prosecutor. The Office of the Prosecutor is grateful to the European Union for its consistent support to this important project, and for recognizing the ongoing need to build the capacity of the national justice sector by providing education and training for young lawyers from the region.

D. Capacity-building

61. During the reporting period, the Office of the Prosecutor continued its efforts, within existing resources, to build capacity in national judiciaries prosecuting war crimes. The Office's capacity-building efforts focus on three areas: the Great Lakes region and East Africa; the former Yugoslavia; and globally. Strengthening national capacities supports the principle of complementarity and national ownership of post-conflict accountability.

62. With respect to the Great Lakes region and East Africa, in Nairobi, in August 2016, staff from the Office led a six-day advanced training course focused on practical legal skills in international criminal law. The training, which had a thematic focus on the prosecution of sexual violence crimes in conflict, was attended by 30 prosecutors and other practitioners from Kenya, Rwanda, South Sudan, Uganda and the United Republic of Tanzania. The training was followed by an experience-sharing conference, which brought together a wide-range of stakeholders, encouraged deeper and more coordinated dialogue, exchange of expertise and action among actors working to address conflict-related sexual violence both at the international and the national level. Materials for the training and conference were drawn from the lessons learned and legacy publications on prosecuting sexual violence produced by the Offices of the Prosecutor of both the Rwanda and Yugoslavia Tribunals.

63. With respect to the former Yugoslavia, the Office of the Prosecutor anticipates significant increases in requests for capacity-building, particularly in Bosnia and Herzegovina, Montenegro and Serbia as these countries advance through in the European Union accession process. Under their respective action plans for chapter 23, Montenegrin and Serbian authorities have committed themselves to improving the capacities of their domestic criminal justice sectors in the prosecution of war crimes, and have identified, as a particular priority, drawing from the expertise and legacy of the International Tribunal for the Former Yugoslavia. Similarly, it is expected that ongoing capacity-building efforts in Bosnia and Herzegovina will continue and increase as it progresses through candidate status in the European Union. The Office of the Prosecutor has contacted authorities in these countries to share relevant materials and offer support in designing and implementing meaningful capacity-building and training programmes.

64. In this regard, the Office of the Prosecutor has developed a proposal to translate its publication, *Prosecuting Conflict-Related Sexual Violence at the ICTY*, into the Bosnian, Croatian, and Serbian languages. The Office is also developing a complementary training programme to help teach practitioners in the States of the former Yugoslavia and elsewhere about the key insights and messages from the book.

65. In addition to its work in the Great Lakes region, East Africa and the States of the former Yugoslavia, the Office of the Prosecutor has increasingly been called upon to engage with national criminal justice sectors around the world that are developing their capacity to prosecute war crimes. The Office aims to ensure that the lessons learned from its work and the best practices that have been developed for international prosecutions are widely shared with national counterparts working across a range of criminal justice issues. One mechanism for promoting this objective is the Prosecuting Conflict-Related Sexual Violence Network, set up through the International Association of Prosecutors, which the Office supports with expertise, information on precedents and other materials. Within the limits of its operational capacity, the Office will continue to engage with training providers and donors working in other areas to ensure that appropriate practical training in investigative and prosecutorial techniques is made available.

E. Missing persons and victim compensation

66. In the Prosecutor's meetings with victims associations, the lack of information concerning missing family members continues to be consistently identified as one of the most important outstanding issues. The search for and exhumation of mass graves and the subsequent identification of the remains need to be accelerated as it is both essential for surviving family members and fundamental to reconciliation in the former Yugoslavia. Victims from all sides of the conflict must be identified.

67. Bosnia and Herzegovina, Croatia, Montenegro and Serbia have undertaken commitments to assume additional responsibilities in the investigation and identification of missing persons from the conflicts. The Office of the Prosecutor encourages these authorities to ensure that their commitments are translated into concrete activities and results, particularly by providing full funding and political support.

68. The Office of the Prosecutor further encourages its national counterparts to actively work within the existing legal frameworks to incorporate compensation claims into criminal trial proceedings, where possible. Procedures should be streamlined to assist war crimes victims in obtaining redress and to discourage the imposition of unnecessary burdens upon the victims, including requiring them to bring separate civil compensation proceedings. The Office also strongly encourages the adoption of operational guidelines for prosecutors to improve the consistency of their approaches across prosecution offices. This, in turn, will ensure better outcomes for victims, and increase their confidence in the rule of law.

V. Other residual functions

69. During the reporting period, the Office of the Prosecutor continued to perform its responsibilities in respect of other residual functions, namely protection of victims and witnesses, contempt of court and false testimony, enforcement of sentences, review of judgments and management of records and archives.

70. As previously reported, the volume of litigation arising out of completed cases in the Mechanism continues to be higher than previously expected. During the reporting period, the Office of the Prosecutor responded to a large number of requests for variation of protective measures and motions for access to case files. The Office was further ordered to conduct three investigations in contempt and completed cases, two at the Arusha branch and one at the branch in The Hague. These unexpected developments, a reminder of the difficulty in predicting the Office's workload, put a strain on its limited resources, particularly at the Arusha branch. The Office was nonetheless able to make sufficient resources available, particularly through its "one office" policy. Similarly, the previously reported trend of attempts by convicted persons to obtain review and ultimately revocation of their convictions entered by the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia also continued, generating a significant workload for the Office.

71. The Office of the Prosecutor also continued to make submissions, when invited, in relation to the enforcement of sentences of persons convicted by the two Tribunals, particularly on requests by convicted persons for early release.

72. Consistent with Security Council resolution 1966 (2010) and article 6 of the transitional arrangements, during the reporting period the Office of the Prosecutor continued the coordinated transition of so-called "other functions" from the Office of the Prosecutor of the International Tribunal for the Former Yugoslavia.

VI. Management

A. Overview

73. The Office of the Prosecutor is committed to managing its staff and resources in line with the Security Council's instructions that the Mechanism be a "small, temporary and efficient structure". The Office continues to be guided by the Security Council's views and requests as set forth in, inter alia, paragraphs 18, 19 and 20 of Council resolution 2256 (2015).

74. An important component of the Office's efforts in this respect is the "one office" approach to integrate the staff and resources of the Offices of the Prosecutor of the Mechanism and the International Tribunal for the Former Yugoslavia for the period of their co-existence. Under this policy, all staff of the Offices of the Prosecutor of both bodies is available to "double-hat" so they can be flexibly assigned to work either for the Mechanism or the International Tribunal, depending on operational requirements and their case-related knowledge. Resources of both Offices are also being flexibly deployed where needed. The Prosecutor has further integrated the management teams for both Offices in order to best support him in carrying out the responsibilities of both institutions.

75. The "one office" approach has already generated efficiencies and overall cost savings. For example, following the judgment of the Appeals Chamber of the International Tribunal for the Former Yugoslavia in December 2015, ordering a retrial in the *Stanišić and Simatović* case, the Office was able to reassign existing staff of the Mechanism and the International Tribunal with case-specific knowledge to carry out the pretrial work in this case. By reassigning existing staff, without conducting recruitment exercises, the Office of the Prosecutor was able to prevent possible delays in commencing the necessary work. Moreover, as this reassignment was absorbed within existing resources for a significant period of time, the Office was able to delay establishing additional posts and incurring related costs.

76. Consistent with the Security Council's instruction, during the reporting period the Office utilized rosters and internal transfer arrangements to efficiently recruit limited numbers of temporary staff, as necessary, to undertake its reduced ad hoc functions. These mechanisms have enabled the Office to temporarily increase its resources as required for ad hoc activities.

77. The Office of the Prosecutor notes the projections for the duration of Mechanism functions prepared by the Mechanism President and provided in his report. In relation to trial and appeal activities, the Office is committed to continuing to meet all deadlines imposed, and will further endeavour to explore all reasonable options within its control to expedite the completion of this work.

B. Audit reports

78. The Office of Internal Oversight Services (OIOS), in its report on assistance to national jurisdictions dated 10 November 2015 (report No. 2015/137, available on the OIOS website), recommended that the Office of the Prosecutor, in conjunction with the Information Technology Services Section and the Mechanism Archives and Records Section, should develop a consolidated, comprehensive database for managing requests for assistance received from national jurisdictions. The Mechanism accepted this recommendation. A solution has been developed, and it is expected to be implemented by the end of 2016, which would close this recommendation.

VII. Conclusion

79. During the reporting period, efforts to locate and arrest the remaining eight fugitives indicted by the International Criminal Tribunal for Rwanda continued. The Office of the Prosecutor completed an overall review of its tracking efforts to date, and has put concrete strategies in place for each of the eight fugitives. State cooperation will be essential to successfully locate and arrest them.

80. The Office of the Prosecutor continued to litigate one trial and two appeals before the Mechanism, both of which were transferred from the International Tribunal for the Former Yugoslavia in accordance with the statute of the Mechanism and the transitional arrangements. The Office of the Prosecutor quickly commenced its work on these cases in a cost-efficient manner, utilizing the roster and "double-hatting" arrangements prescribed by the Security Council. Using the "one office"

approach, the Office will continue to allocate and manage its resources flexibly in order to comply with all imposed deadlines.

81. Significant challenges remain with respect to the national prosecution of war crimes in the States of the former Yugoslavia and Rwanda. Regarding the national prosecution of war crimes committed in Rwanda, cases referred to France are still ongoing, and there has been progress in the cases referred to Rwanda. Regarding national prosecutions of war crimes committed in the former Yugoslavia, the Prosecutor's Office of Bosnia and Herzegovina continued to achieve positive results, while outstanding issues remain unresolved in Croatia and Serbia. Of significant concern, the negative impact of the political environment on domestic war crimes justice is intensifying. Politics, both domestic and regional, has been hindering regional judicial cooperation and undermining trust in judicial accountability, and is increasingly posing a risk to the independence of the judiciary. The Office of the Prosecutor will continue to engage with counterparts and support improvement of the processing of national war crimes. The Office will also continue to encourage improved regional cooperation on war crimes matters and will closely monitor developments.

82. In all of its endeavours, the Office of the Prosecutor relies upon and gratefully acknowledges the support of the international community, and especially that of the Security Council of the United Nations.

United Nations S/2016/976

Security Council

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Letter dated 17 November 2016 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Criminal Tribunal for the former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I would be grateful if you could transmit the present letter and its annexes to the members of the Security Council.

(*Signed*) Carmel **Agius**
President

16-20420 (E) 021216

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Annex I

[Original: English and French]

Assessment and report of Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004) (period from 18 May 2016 to 17 November 2016)

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1. The present report is submitted pursuant to Security Council resolution 1534 (2004), adopted on 26 March 2004, in which the Council, in paragraph 6 of the resolution, requested the International Tribunal for the Former Yugoslavia to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the completion strategy of the Tribunal, explaining what measures have been taken to implement the completion strategy.[1]

2. The report also includes a summary of the measures that the Tribunal continues to undertake to complete the smooth transition to the International Residual Mechanism for Criminal Tribunals.

I. Introduction

3. The Tribunal continued to make significant progress in completing its work during the reporting period. Judgment was delivered in the appeal case of *Prosecutor v. Mićo Stanišić and Stojan Župljanin* ("*Stanišić and Župljanin* case"), in line with the previously forecast date, and steady work continued in the final trial case of *Prosecutor v. Ratko Mladić* ("*Mladić* case") and the final appeal case of *Prosecutor v. Jadranko Prlić et al.* ("*Prlić et al.* case"). In addition, the trial case of *Prosecutor v. Goran Hadžić* ("*Hadžić* case") was terminated following the death of the accused. At the close of the reporting period, one trial case, involving one individual, and one appeal case, involving six individuals, were ongoing.

4. The Tribunal has to date concluded proceedings against 154 of the 161 individuals it has indicted, as well as contempt proceedings against 25 persons. While there are no outstanding fugitives of the Tribunal charged with serious violations of international humanitarian law, in the contempt case of *Prosecutor v. Petar Jojić et al.* ("*Jojić et al.* case"), there are still three indictees of the Tribunal whose arrest warrants are yet to be executed. The Tribunal is extremely concerned about the continued failure of Serbia to cooperate in this case. Further details are provided below.

5. As the Tribunal approaches its final year of operations, it continues to implement the completion strategy and to make every effort to ensure that the forecast dates for delivery of judgment in the final cases, and the Tribunal's ultimate closure, are met. The Tribunal also continues to downsize in accordance with existing schedules, while endeavouring to ensure that the remaining trial and appeal proceedings are fully supported. Ensuring full capacity and support is becoming an

[1] The present report should be read in conjunction with the previous 25 reports submitted pursuant to Security Council Resolution 1534 (2004): S/2004/420 of 24 May 2004, S/2004/897 of 23 November 2004, S/2005/343 of 25 May 2005, S/2005/781 of 14 December 2005, S/2006/353 of 31 May 2006, S/2006/898 of 16 November 2006, S/2007/283 of 16 May 2007, S/2007/663 of 12 November 2007, S/2008/326 of 14 May 2008, S/2008/729 of 24 November 2008, S/2009/252 of 18 May 2009, S/2009/589 of 13 November 2009, S/2010/270 of 1 June 2010, S/2010/588 of 19 November 2010, S/2011/316 of 18 May 2011, S/2011/716 of 16 November 2011, S/2012/354 of 23 May 2012, S/2012/847 of 19 November 2012, S/2013/308 of 23 May 2013, S/2013/678 of 18 November 2013, S/2014/351 of 16 May 2014, S/2014/827 of 19 November 2014, S/2015/342 of 15 May 2015, S/2015/874 of 16 November 2015, and S/2016/454 of 17 May 2016. Except where otherwise noted, the report contains data accurate as at 17 November 2016.

increasingly difficult task, with staff attrition continuing to pose an extremely serious challenge across all sections of the Tribunal. However, the Tribunal reiterates its commitment to closing on time and asks that Member States continue to support it in doing so.

6. In addition to its judicial caseload and related support activities, during the reporting period the Tribunal has continued its efforts to complete the smooth transition of functions to the Mechanism, in compliance with Security Council resolution 1966 (2010), including through the ongoing review and preparation of records for transfer to the Mechanism.

II. Implementation of the completion strategy

7. The Tribunal stands firm in its commitment to close its doors by the end of 2017. In particular, it remains committed to concluding all judicial work on time and in an expeditious manner, bearing in mind that the principles of fairness and due process must be paramount in the conduct of all trial and appeal proceedings.

8. To that end, during the reporting period, the Tribunal has continued to implement measures designed to enhance efficiency and ensure continuous capacity, including: reassigning staff from concluded cases to ongoing cases; providing teams with additional staff resources, as needed, including through internal and external recruitment processes; maintaining rosters of qualified applicants to ensure that departing staff are replaced as quickly as possible; requesting flexibility in applying United Nations Staff Regulations that could lead to delays in staff recruitment and retention, or prevent the hiring/promotion of fixed term staff members for periods of less than 12 months; and promoting eligible staff members as a means of boosting morale and discouraging attrition. In addition, the Trial and Appeal Scheduling Working Group, chaired by the Vice-President of the Tribunal, continues to meet regularly to monitor and report on the progress of the remaining cases, to ensure that they are kept on track, and to identify potential causes of delay and measures to alleviate such delay. A list of broader efficiency measures taken by the Tribunal during its lifetime is included below.

9. While the Tribunal is doing all it can to ensure its efficient and orderly closure in 2017, it wishes to once again raise the alarm regarding staff attrition. As reported previously, this is the most critical challenge faced by the Tribunal and, if left unchecked, may have a serious impact on the Tribunal's ability to complete all judicial work on time. Experienced staff members continue to leave the Tribunal to take up more secure and longer-term appointments elsewhere, and new staff members inevitably require significant amounts of time to familiarize themselves with the voluminous case records and the working methods of the Tribunal. The loss of experienced staff members, who have institutional and case-specific knowledge, will be particularly damaging in 2017, and the rate of departures is only expected to increase during the year.

10. With these concerns in mind, the President recently discussed with the Department of Management a proposal developed by the Tribunal, for the consideration of the General Assembly, in relation to retention incentives for staff members who remain at the Tribunal until the end of their respective contracts. This

proposal was also raised by the President in a subsequent meeting with the Secretary-General on 8 November 2016. The Tribunal considers that such a proposal, if ultimately accepted, would be crucial in providing mid-level and senior staff with the incentive they need to remain at the Tribunal until the completion of their cases, and thereby encouraging them to forego other, more favourable employment opportunities in the meantime. The recent proposal is similar to a previous proposal endorsed by the International Civil Service Commission, which, as previously reported, was recommended by the Advisory Committee on Administrative and Budgetary Questions but final action in respect of which was unfortunately not taken by the Fifth Committee of the General Assembly.[2]

11. The Tribunal wishes to emphasize, however, that the conditions in 2016 are significantly different from those obtaining in 2008 when the initial proposal was submitted. First, unlike in 2008, the Tribunal's completion strategy is no longer open-ended but has a target date for completion set for 31 December 2017. As a result, the staffing challenges it faces are acute. Secondly, the number of staff members who are potentially eligible for the payment of the incentive is far fewer than the number of eligible staff in 2008. In fact, there is a 73 per cent reduction in eligible staff numbers, meaning that the financial implications of the present proposal are also considerably reduced. Thirdly, unlike the earlier proposal, which applied to both the Tribunal and the International Criminal Tribunal for Rwanda, the current proposal would apply only to the International Tribunal for the Former Yugoslavia, given the closure of the International Criminal Tribunal for Rwanda in 2015. This represents a further and significant reduction in cost compared with the previous proposal.

12. The Tribunal cannot emphasize enough the impact that continued staff attrition will have on its operational capabilities in the final year. It therefore considers the introduction of a financial incentive for staff to be crucial to enabling it to complete the remaining cases on schedule. The Tribunal hopes that, if its current proposal is put forward, Member States will understand the serious nature of its staffing predicament, and the proposal will be positively received.

13. Finally, the Tribunal once more acknowledges with sincere gratitude the valuable staffing support received from China, which has resulted in several fellows and interns from China commencing work in various sections of the Tribunal during the reporting period. The Tribunal takes this opportunity to publicly thank these individuals for their excellent work and contribution, which has already been noted within the Tribunal. Notwithstanding this generous assistance, the problem of staff attrition will remain acute unless a comprehensive solution is found. The Tribunal therefore again encourages other Member States to also lend their support in any way possible.

14. To provide a more thorough overview of the challenges faced by the Tribunal in individual cases and of the Tribunal's progress in completing its work, summaries of the remaining trials and appeal, together with the recently completed cases, are provided below.

[2] See, e.g., S/2011/716 of 16 November 2011, pp. 12-13; S/2012/354 of 23 May 2012, p. 11; S/2012/847 of 19 November 2012, p. 10; S/2013/308 of 23 May 2013, p. 11; and S/2013/678 of 18 November 2013, pp. 7-8.

A. Trial proceedings

15. In the *Hadžić* case, the accused Goran Hadžić was charged with 14 counts of crimes against humanity and violations of the laws or customs of war, all in relation to acts allegedly committed in Croatia and Serbia between 25 June 1991 and December 1993. The Trial Chamber was composed of Judges Guy Delvoie (presiding), Burton Hall, and Antoine Kesia-Mbe Mindua. The trial commenced on 16 October 2012. However, owing to serious problems with Mr. Hadžić's health, the trial was interrupted and no hearings in this case were held after 20 October 2014. On 26 October 2015, the Trial Chamber ordered a stay of proceeding for an initial period of three months owing to the ill health of the accused. On 24 March 2016, the Trial Chamber found the accused unfit to stand trial and stayed the proceedings indefinitely. Following the death of Mr. Hadžić on 12 July 2016, the Trial Chamber terminated the proceedings in this case on 22 July.

16. In the *Mladić* case, the accused Ratko Mladić is charged with 11 counts of genocide, crimes against humanity, and violations of the laws or customs of war, all in relation to acts allegedly committed in Bosnia and Herzegovina between 12 May 1992 and 30 November 1995. The Trial Chamber is composed of Judges Alphons Orie (presiding), Christoph Flügge, and Bakone Justice Moloto. The trial commenced on 16 May 2012 and the evidentiary phase of the case was concluded in August of this year. Following the submission of the parties' final briefs and the presentation of final arguments in court, the Trial Chamber will be fully engaged in deliberations and drafting of the judgment. The estimate for the delivery of the judgment remains November 2017. The judges and legal support team have taken a variety of measures to minimize delays in the preparation of the trial judgment, including involving additional staff resources in the drafting process. Although such resources have been assigned, highly qualified staff members are expected to continue to leave the Tribunal for more secure employment elsewhere. It will thus be an increasing challenge to maintain the continuity of core staff, which is of utmost importance in a case of such size and complexity.

17. In the *Jojić et al.* contempt case, the accused Petar Jojić, Jovo Ostojić, and Vjerica Radeta are each charged with four counts of contempt of court in relation to alleged witness intimidation in the trial case of *Prosecutor v. Vojislav Šešelj* ("*Šešelj* case"). The proceedings in the *Jojić et al.* case were confidential until 1 December 2015. Arrest warrants have been pending execution in Serbia since 19 January 2015. As a result, it is not possible to estimate the exact commencement and length of the case. If the arrest warrants are not executed soon, it may become necessary for the Security Council to urgently discuss a solution that would allow this case to be finalized before November 2017.

18. The Tribunal takes this opportunity to again express its serious concern in relation to the lack of cooperation by Serbia in the *Jojić et al.* case, in particular its failure to execute the arrest warrants issued more than 21 months ago, as well as its failure to file any progress reports before the Trial Chamber since May of the current year. As indicated by the President of the Tribunal in his address to the Security Council on 8 June 2016, the failure of Serbia to arrest and transfer the accused, and the decisions issued by the War Crimes Chamber of the High Court in Belgrade in May 2016, represent a surprising and disturbing step backwards from

the status quo on cooperation with the Tribunal. The Tribunal notes that, since then, on 2 August 2016, the Trial Chamber ordered Serbia to comply with its obligations under article 29 of the Statute of the Tribunal. Furthermore, on 14 September 2016, the Trial Chamber formally advised the President of the Tribunal of Serbia's continued failure to comply with these obligations.

19. The Tribunal reminds Serbia that it has a duty to fully cooperate with the Tribunal in accordance with Security Council resolutions and the Statute of the Tribunal, which establishes primacy over Serbian domestic law. It emphasizes that interference with the administration of justice strikes at the heart of any legal system, and that conducting and concluding these contempt proceedings is of utmost importance for the Tribunal — and for international justice more broadly.

B. Appeals from judgment

20. In the *Stanišić and Župljanin* case, the appeal judgment was pronounced on 30 June 2016. The Appeals Chamber, composed of Judges Carmel Agius (presiding), Liu Daqun, Christoph Flügge, Fausto Pocar, and Koffi Kumelio A. Afanđe, dismissed the parties' respective appeals and affirmed Mr. Stanišić's and Mr. Župljanin's sentences of 22 years of imprisonment.

21. In the *Prlić et al.* case, briefing was completed on 29 May 2015. The projected time frame for delivery of the appeal judgment remains November 2017. The Appeals Chamber is composed of Judges Carmel Agius (presiding), Liu Daqun, Fausto Pocar, Theodor Meron, and Bakone Justice Moloto. This is the most voluminous appellate case in the history of the Tribunal, with seven appeals (one by each of the six defendants, as well as the Office of the Prosecutor), 172 grounds of appeal, and 12,196 pages of appellate submissions dealing with a trial judgment of more than 2,000 pages. Although additional staff resources have been assigned to ensure that the November 2017 deadline can be met, highly qualified staff members continue to leave the Tribunal for more secure employment elsewhere. As with the *Mladić* case, it will thus be increasingly difficult to maintain the continuity of core staff, which is crucial in a case of such size and complexity. Yet the Appeals Chamber remains committed to completing the case by November 2017, and the drafting of the preparatory document analysing the parties' appellate submissions is on track, with the aim to be finalized by the end of 2016. Furthermore, the judges and legal support team have taken a variety of measures to avoid delays in the preparation of the appeal judgment. These include the creation of a timeline and organization of a detailed workplan designed to maximize staff resources, as well as the provision of ad hoc assistance to the team by legal officers assigned to the judges on the bench.

III. Mandate of judges and appointment of an ad hoc judge

22. After the delivery of judgment in the *Stanišić and Župljanin* case, the term of office of one judge of the Appeals Chamber[3] came to an end. Following the death of Goran Hadžić and the resulting termination of the *Hadžić* case, a further three

[3] Judge Koffi Kumelio A. Afanđe.

judges[4] departed the Tribunal, leaving a total of seven permanent judges. Five of these permanent judges are assigned to the Appeals Chamber in the *Prlić et al.* case[5] and three are assigned to the Trial Chamber in the *Mladić* case,[6] with one judge assigned to both cases.[7]

23. The Tribunal thereby found itself in a position in which it could not compose an Appeals Chamber bench of five judges, as required by article 12 of the Statute of the Tribunal, in the event of any interlocutory appeals in the *Mladić* case. As a result, on 29 July 2016, the President of the Tribunal requested that the Secretary-General refer the matter to the Security Council for its earliest consideration. On 6 September 2016, by its resolution 2306 (2016), the Council amended the Statute of the Tribunal to include new article 13 quinquies, which provides for the appointment of an ad hoc judge by the Secretary-General if there is no permanent judge currently serving at the Tribunal available for assignment to the Appeals Chamber. Pursuant to this new provision, Judge Burton Hall (Bahamas), former permanent judge of the Tribunal and current judge of the Mechanism, was subsequently appointed to the Tribunal as an ad hoc judge. Two interlocutory appeals have since been filed in the *Mladić* case and an Appeals Chamber of five judges, including Judge Hall, has been assigned to each appeal. The Tribunal wishes to extend its sincere thanks to all the Members States of the Security Council for their prompt reaction to its request and their cooperation and assistance in this pressing matter.

24. The Tribunal has requested an extension of the mandates of all permanent judges, and of Judge Hall as ad hoc judge, until 30 November 2017 or the completion of the case or cases to which they are or will be assigned, if sooner. In addition, it has requested a further extension of the mandate of the President of the Tribunal to 31 December 2017, to allow him to oversee the closing down of the Tribunal. On 11 November 2016, the Secretary-General conveyed the Tribunal's request to the President of the Security Council (see A/71-614-S/2016/959, annex). The President looks forward to meeting with Member States and discussing these extensions, which are necessary for the ultimate conclusion of the Tribunal's mandate, during his upcoming mission to New York.

IV. Amendment of the Rules of Detention

25. At an extraordinary plenary session of judges on 15 November 2016, the judges of the Tribunal unanimously adopted amendments to the Rules of Detention of the Tribunal, to bring them into full alignment with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (see General Assembly resolution 70/175, annex), as well as the recommendations made by the International Committee of the Red Cross. These amendments will ensure greater protection of the rights of the Tribunal's detainees and that these individuals are held in accordance with the highest standards of detention worldwide. Once the

[4] Judges Guy Delvoie, Burton Hall, and Antoine Kesia-Mbe Mindua.
[5] Judges Carmel Agius (presiding), Liu Daqun, Fausto Pocar, Theodor Meron and Bakone Justice Moloto.
[6] Judges Alphons Orie (presiding), Christoph Flügge and Bakone Justice Moloto.
[7] Judge Bakone Justice Moloto.

rules of detention of the Mechanism have been adopted, the Tribunal's Rules of Detention may be further updated, as necessary, to ensure conformity between both sets of rules.

V. Evaluation by the Office of International Oversight Services

A. Background

26. In its resolution 2256 (2015), the Security Council requested the Office of Internal Oversight Services (OIOS) to carry out an evaluation with respect to the methods and work of the Tribunal, in the context of the implementation of the completion strategy pursuant to resolution 1966 (2010), and to present its report by 1 June 2016. Furthermore, the Council requested the Tribunal to report on the implementation of any OIOS recommendations in its next six-monthly report thereafter to the Council on progress towards implementation of the completion strategy of the Tribunal (i.e., the present report).

27. The OIOS evaluation team visited the Tribunal from 7 March to 18 March 2016 and subsequently issued its report on 12 May 2016 (see A/70/873-S/2016/441), in which it made four recommendations to the Tribunal. The preliminary response of the Tribunal is contained in annex I to the report. The Tribunal had been given 7 days to respond to the initial draft report of OIOS, and 10 days to provide comments in respect of the revised version. During his mission to New York in June 2016, the President indicated that this response was not the Tribunal's final position and that the Tribunal would report on its implementation of any OIOS recommendations later in the year, in accordance with resolution 2256 (2015) and following full discussion with all judges. The President indicated, however, that in the meantime, he was interested to hear the comments and questions of Member States.

28. The Tribunal emphasizes that it welcomed the opportunity to assess its methods and work and granted its fullest cooperation to OIOS. The Tribunal was — and is — prepared to have its record evaluated, and indeed believes that this record reflects significant and historic achievements and demonstrates a constant drive for improvement in the efficiency of the administration of justice. Not only did the OIOS evaluation allow the Tribunal's work and achievements to be recognized, it also allowed for the identification and frank discussion of the Tribunal's shortcomings and challenges, thereby providing valuable food for thought. The Tribunal fully cooperated with the evaluation team, making available to them extensive documentation, as well as granting access to a large number of judges and senior staff who cumulatively devoted a considerable number of hours to meeting with the evaluators.

29. Furthermore, the Tribunal assures the Security Council that all OIOS recommendations have been examined carefully and taken very seriously. Indeed, as mentioned by the President in New York in June 2016, the Tribunal acknowledges that it is in the collective interests of the Council and the Tribunal that the OIOS evaluation be a fruitful exercise. For that reason, the Tribunal paid special attention to the comments provided by Members States of the Council during the exchanges in the Informal Working Group on International Tribunals on 7 June, and during the

Security Council debate held on 8 June (see S/PV.7707). Upon the President's return from New York, he reported these exchanges to all Tribunal judges and included a full discussion of the OIOS report and its recommendations in the agenda of the forty-seventh plenary session of judges, which was held on 6 July. As detailed below, these discussions resulted in the unanimous adoption of the Code of Professional Conduct for the Judges of the Tribunal, which is contained in enclosure VII to the present report.

30. Before addressing the implementation of any OIOS recommendations, the Tribunal would like to reinforce some points concerning the evaluation framework. First, the evaluation was conducted under very tight time constraints, with the evaluators on-site at the Tribunal for only two weeks and the time period for drafting the OIOS report and the Tribunal's response being extremely short. This was unfair not only to OIOS, but also to the Tribunal, and in the Tribunal's view did not allow for a sufficient understanding or comprehensive assessment of its methods and work. Moreover, the relevant time period was extremely busy for the Tribunal in terms of judicial workload, and, regretfully, every moment spent on the evaluation was crucial time not able to be spent on the cases being adjudicated and finalized in those same weeks. The Tribunal notes that evaluations at other courts and tribunals have been carried out in time periods of no less than one year.

31. Secondly, the Tribunal emphasizes that, to allow for a truly effective assessment, such evaluations should be carried out by professionals who are familiar with the unique characteristics and working methods of international judicial institutions. Given the nature and magnitude of the cases before it, the Tribunal cannot be equated to domestic courts. In addition, the Tribunal cannot be compared with non-judicial programmes and agencies as its core functions, namely, the judicial work, must be guided first and foremost by considerations of fairness and due process. Evaluating an institution such as the Tribunal thus differs fundamentally from evaluating other organizations because its "end product" is the criminal justice process itself.

32. Accordingly, the Tribunal's relevance, effectiveness and efficiency must be measured by the quality, integrity and fairness of each stage of the judicial process. Unfortunately, the OIOS report does not reflect an appreciation of these factors. Instead, the evaluation applied across the board the standard "results-based management framework", which, as noted by the Tribunal in its response, had never applied to judicial decision-making (see A/70/873-S/2016/441, para. 9; see also paras. 8, 10, 11 and 21-28). In this respect, the Tribunal emphasizes that applying a results-based management framework to a judicial institution incorrectly shifts the focus from the fair and efficient adjudication of trials and appeals — namely, the delivery of justice — to the delivery of measurable and time-bound outputs and outcomes. This is not appropriate, practical, or realistic. In the Tribunal's view, if any kind of framework can appropriately be applied to a judicial institution, it must be one focused on performance and impact: in particular, how is the institution operating, and are its activities both fair and efficient? As it stands, however, with the exception of certain Registry activities, the Tribunal's results and achievements fall outside the scope of a results-based management framework. Consequently, the OIOS evaluation focused on indicators that were never intended to demonstrate

performance of the Tribunal's completion strategy, and missed the results falling outside such a framework.

33. Finally, the Tribunal regrets that the scope of the OIOS evaluation was limited to the period 2010-2015. Unfortunately, as a result many of the innovations that the Tribunal introduced prior to, or indeed after, 2010 to increase efficiency were excluded from the scope of the evaluation, as were the three judgments issued in the first half of 2016 in accordance with the dates for delivery forecast in the completion strategy reports of the Tribunal of November 2015 and May 2016.

B. Measures undertaken by the Tribunal to increase efficiency in the conduct of cases

34. As recognized by OIOS, the Tribunal has always been at the forefront of developing international criminal procedures and has served as a model for other international courts (see A/70/873-S/2016/441, para. 53). Given the limited scope of the OIOS evaluation, as discussed above, the Tribunal would like to take the opportunity to highlight for Member States many of the numerous efficiency measures it has taken over the years. Indeed, the Tribunal started early in its existence to consider ways, with support from the Security Council, to incorporate efficiency measures into its trial and appeal processes, while safeguarding principles of fairness. The overview below briefly describes these measures, which the Tribunal strongly believes demonstrate its genuine desire, as well as its constructive and effective efforts, to meet the goals of its completion strategy and to prevent and reduce delays in its judicial work.

1. Increased capacity to hold trials and appeals

(a) Available courtroom space

35. Following efforts to join indictments to facilitate large multi-accused or "mega" cases (see para. 41 below), the Tribunal's courtrooms were renovated in 2006 to accommodate such cases. The Tribunal's original courtroom was expanded to hold up to six accused and the third courtroom was rebuilt to accommodate up to nine accused.

(b) Effective courtroom schedules through split sessions

36. As the number of active cases increased around the year 2000 owing to the arrests of several accused, and in an effort to ensure the timely completion of cases, the schedule for each of the Tribunal's courtrooms was split into two daily sessions, from 9 a.m. until 1:45 p.m., and from 2:15 p.m. until 7 p.m.[5] This measure increased the Tribunal's effectiveness considerably and also paved the way for very active judicial work a few years later as the new cases simultaneously reached the trial stage.

[5] Originally, court hearings were held from approximately 10 a.m. until 4 p.m., with a break for lunch.

(c) Structure of Chambers

37. The Statute of the Tribunal originally provided for two Trial Chambers and one Appeals Chamber (see Security Council resolution 827(1993) and document S/25704 and Corr.1 and Add.1). However, responding to a request by the President of the Tribunal for a third Trial Chamber and four new judges,[9] on 13 May 1998, the Security Council established the new Trial Chamber and increased the number of judges by three, bringing the total number of judges to 14 (see resolution 1166 (1998)).

38. In May 2000, to further expedite its operations and in the light of the number of pending cases, the President of the Tribunal requested an amendment of the Statute to enable the appointment of ad litem judges, that is, judges intended to sit on one case, and the appointment of two additional permanent judges.[10] On 30 November 2000, the Security Council granted this request, expanding the number of permanent judges to 16 and establishing a pool of 27 ad litem judges from which the President could draw.[11] In practice, several ad litem judges heard more than one trial, and the capacity of the Trial Chambers to hear and complete cases expanded significantly.[12]

(d) eCourt

39. Beginning with the *Prosecutor v. Sefer Halilović* trial, which commenced on 31 January 2005, the Tribunal implemented a ground-breaking electronic courtroom management initiative, eCourt. One of the main purposes of eCourt was to improve the efficiency of trial proceedings overall, among other ways, by reducing the need to rely on hardcopy documents, without causing prejudice to the rights of the parties. The system allows for the simultaneous electronic tendering, admission and presentation of documentary, photographic and video evidence in court in several languages. eCourt also facilitates the markup of exhibits, such as photos and maps,

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[9] See press release 291 of 16 February 1998 (CC/PIO/291-E), available from www.icty.org/en/presalsoats/president-mcdonald-asks-security-council-establish-additional-trial-chamber.

[10] See identical letters dated 7 September 2000 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council (A/55/382-S/2000/865), containing President Claude Jorda's request of 12 May 2000 to the Secretary-General and a report from the President on behalf of the judges of the Tribunal, entitled "Current state of the International Tribunal for the Former Yugoslavia: future prospects and reform proposals". This report contains an evaluation of numerous measures taken to further improve the effectiveness of the Tribunal's judicial work.

[11] See resolution 1329 (2000). Importantly, this amendment of the Statute also allowed each Trial Chamber to be composed of up to three permanent judges and six ad litem judges and to be divided into "sections" of three judges, each of which was afforded the same powers and responsibilities as a Trial Chamber under the Statute. Furthermore, under the ad litem system, the President could also assign ad litem judges to contempt cases, which allowed for a more equitable distribution of workload among the judges, and which sped up both contempt and substantive cases.

[12] In fact, when the first six ad litem judges were sworn in on 6 September 2001, the Tribunal's capacity doubled to six simultaneous trials. At its peak in 2009-2011, the Tribunal had up to 10 cases active at the trial stage.

by witnesses and considerably speeds up the synthesizing and analysis of evidence by Chambers during the judgment drafting phase.[13]

2. Reductions in the number of trials by transferring cases

40. In an effort to allow the Tribunal to focus its efforts on the most senior leaders suspected of being most responsible for crimes within its jurisdiction and thereby reduce the number of trials to be held, the Referral Bench of the Tribunal referred eight cases involving 13 accused (equivalent to 8 per cent of 161 accused) to competent national authorities.[14] Ten accused were transferred to the War Crimes Chamber of the State Court of Bosnia and Herzegovina, two accused were transferred to the Zagreb County Court in Croatia and one accused was transferred to the Belgrade District Court in Serbia (see S/2009/252, annex I, paras. 44-46).

3. Increased efficiency in holding trials and appeals

(a) Joinder of cases

41. From the start of the Tribunal's operation, accused persons have been tried jointly to the extent possible, bearing in mind applicable legal requirements, with a view to using the scarce judicial resources of the Tribunal as effectively as possible. Over the years, the Tribunal has conducted 22 multi-accused trials involving 73 accused, with the greatest efficiency stemming from the decision of the Joinder Bench[15] to conduct three multi-accused trials involving 19 accused.[16] Over the years, this approach has resulted in proceedings being conducted much more efficiently than would be the case had each accused been tried separately, while preserving the highest standards of procedural fairness.

(b) Reduction in the scope of indictments

42. Trial Chambers may invite the Office of the Prosecutor to reduce the number of counts in the indictment and may themselves fix the number of crime sites or incidents comprising one or more of the charges, provided these are reasonably representative of the crimes charged.[17] By employing this provision, which has been in force since mid-2003, to reduce the scope of indictments, Trial Chambers have achieved substantial time savings by balancing the interests of justice, on the one

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[13] The system, which also ensures that all evidence introduced at trial is available to the parties, judges and staff from the moment the evidence is used in court, has saved enormous amounts of time and improved work processes across the Tribunal considerably.

[14] In addition, the Tribunal has continued to provide capacity-building, such as professional and legal advice especially in areas such as command responsibility and witness protection, to these competent national authorities. These referrals have resulted in significant time savings for the Tribunal, while at the same time strengthening national jurisdictions.

[15] This was a special panel composed of judges from different Trial Chambers, which was formed to consider whether similar indictments should be joined in order to reduce the overall number of separate trials and thereby expedite the work of the Tribunal.

[16] *Prosecutor v. Milan Milutinović et al.*, *Prosecutor v. Vujadin Popović et al.* and the *Prlić et al.* case.

[17] Rule 73 bis (D) of the Rules of Procedure and Evidence.

hand, with the streamlining of prosecutions, on the other, thus allowing the judicious and efficient use of Chambers resources.[18]

(c) Other judicial measures during trials

43. Cases are usually assigned as early as possible to the Trial Chamber likely to try the case. In some cases, the pretrial judge has also been assigned to the Trial Chamber hearing the case in order to preserve continuity and the knowledge of a case as built up during pretrial preparations. The Tribunal's Rules of Procedure and Evidence also contain tools that judges use to shorten the length of proceedings, such as the use of agreed facts and adjudicated facts from past proceedings of the Tribunal, the admission of evidence in writing instead of orally in court, the strict enforcement of time limits upon the parties, and, discouraging or disallowing duplicative evidence.

(d) Office of Document Management

44. The Tribunal holds approximately 1.3 million documents, equating to more than 9 million pages in the Office of the Prosecutor's Evidence Collection. A very small part of this collection comprises duplicates. However, an analysis indicated that, as a result of this duplication, many documents were being translated twice. In an effort to save resources and increase efficiency, the Tribunal established the Office of Document Management, which receives, analyses and manages translation requests. This has improved the use of the Tribunal's translation resources. As an example, in 2012, the Office received nearly 70,000 pages of translation requests, but determined that 16,000 pages had already been translated.

(e) eDisclosure

45. Trials before the Tribunal are extremely document-intensive. Given the large volume of documents that the Tribunal maintains, the Tribunal has developed an eDisclosure system that allows for streamlined disclosure of large volumes of documents from the Office of the Prosecutor to the defence. The system also provides the defence with the same kind of electronic search capacity, which not only increases procedural fairness, but also increases the efficiency of the defence in the preparation and conduct of its cases.

4. Other

(a) Trial and Appeal Scheduling Working Group

46. The working group, chaired by the Vice-President of the Tribunal, was originally established to monitor the progress of cases at the pretrial and trial stage in order to advise the President of the Tribunal as to which of the pretrial cases should next proceed to trial. The focus was on making optimal use of courtroom availability within the framework of judicial workload and other factors affecting

[18] For example, in the *Mladić* case, the Trial Chamber adopted the Office of the Prosecutor's proposal to limit its presentation of evidence to a selection of 106 crimes, instead of 196 initially scheduled crimes in the indictment, and to limit the number of municipalities (or crime bases) to 15 instead of 23. This has resulted in a substantially reduced length of the evidentiary phase of trial.

the scheduling of cases. The working group, which was expanded to include scheduling of cases on appeal, meets regularly to monitor the progress of cases and is a key advisory tool for the achievement of the completion strategy.

(b) Working Group on Speeding up Appeals

47. Measures aimed at expediting appeals adopted pursuant to the recommendation of the Working Group on Speeding Up Appeals continue to be applied. These include strict adherence to the requirement of good cause to vary time and word limits, and the practice of not delaying the briefing schedule on appeal to await the translation of a judgment.

(c) Rules Committee

48. The Rules Committee of the Tribunal has been instrumental throughout the Tribunal's existence to the process whereby the judges themselves adjust the Rules of Procedure and Evidence to improve the efficiency of the proceedings of the Tribunal, while safeguarding the rights of the accused. Some of the many changes it has introduced to speed up cases and prevent delays include: (a) the amendment of rule 11 bis to allow referral of indictments to national authorities; (b) the adoption of rule 15 ter to allow for reserve judges; (c) the amendment of rule 73 bis to allow counts in indictments to be reduced; and (d) the adoption of rules 92 bis, 92 ter, 92 quater and 92 quinquies to allow for greater use of alternatives to *viva voce* testimony. The Rules Committee is composed of Tribunal judges as voting members, with the Office of the Prosecutor, the Registrar and a representative of the Association of Defence Counsel as non-voting members.

(d) Staff resource efficiencies

49. Staff members in Chambers have always been assigned to multiple cases. Typically, staff members would be assigned to one or several cases at the pretrial stage while at the same time working on trials and appeals. Chambers management has also assigned staff members who have additional capacity to assist on a part-time basis with judicial cases potentially subject to delay.

50. Moreover, the work processes within Chambers have since very early in the Tribunal's existence included commencing the drafting of judgments at an early stage during trials, thus synthesizing and analysing evidence as it is being received. Similarly, the drafting of appeal judgments begins very early during the appeals proceedings, once briefing is complete.

51. Recently, to assist the remaining "mega" appeal, the *Prlić et al.* case,[19] management doubled the size of the Chambers legal support team to enable the Appeals Chamber to issue its judgment in conformity with the projected timeline, which, despite the greater size of the appeal, is shorter than the time taken for other multi-accused appeal judgments.

[19] This case is approximately the size of the *Prosecutor v. Nikola Šainović et al.* and *Prosecutor v. Vujadin Popović et al.* appeal proceedings combined.

(e) Translation efficiencies

52. The Conference and Language Service Section continues to actively manage the translation process for judgments and assign additional resources to translations that may have an impact on the progress of judicial proceedings.

(f) Regular medical monitoring and reporting with regard to accused persons

53. The health of the Tribunal's accused persons has on occasion affected the progress of cases. Monitoring of the accused's medical situation is crucial in ensuring that accused persons receive appropriate and adequate treatment, but also enables proper planning and the best use of Chambers resources. Such information improves forecasting of court hearing days and staffing requirements, and permits the redeployment of staff to cases with the most demanding workloads.

C. Implementation of the recommendations of the Office of Internal Oversight Services

1. Recommendation 1

54. Turning now to the implementation by the Tribunal of the specific recommendations, recommendation 1 of the report of OIOS states as follows: "**Adopt case process time standards based on the different types of case management approaches and monitor progress towards those internal benchmarks.** The Tribunal should develop a time standard benchmark on the basis of its past cases for best practices and for future ad hoc tribunals since it has demonstrated that it is able to gather sufficient information at the advanced stage of judicial activity to make a reasonably accurate forecast" (A/70/873-S/2016/441, para. 56).

55. For the reasons set out in its response (ibid., annex I, paras. 19 and 20), and following full discussion with the judges, principals and senior staff, the Tribunal has decided not to implement this recommendation.[20] The Tribunal considers that this recommendation reflects a lack of understanding of court operations and is concerned that the establishment of such a benchmark and the monitoring of judicial progress as envisaged by OIOS could have negative implications for judicial independence and the right to a fair trial. The Tribunal emphasizes that it is critical to safeguard judicial independence and the right to a fair trial at all times. Furthermore, the Tribunal reiterates that forecasts of the length of trials and appeals will continue to be unique for each case,[21] and that time standards set by the Tribunal would not be applicable to future courts.

[20] As noted in para. 19 of the response, "This recommendation is an updated version of a recommendation from a 2008 audit report (AA2008/270/01) that the OIOS undertook of the Tribunal's completion strategy. The Tribunal did not accept the recommendation, stating that "The use of performance standards such as 'average length of trial' is almost meaningless" in comparing one trial to another, due to the multiple complexities and unique factors involved in every case. As with the current exercise, the Tribunal considered that the 2008 recommendation reflected a lack of understanding of court operations."

[21] Such forecasts evolve according to numerous factors that can affect the overall estimate of the length of a trial, such as the number of accused, the complexity of a case, whether the accused is or are represented by counsel or self-represented, the health of the accused, etc.

56. As noted in its response, this is not to say that the Tribunal does not have clear and measurable objectives and indicators to measure progress in judicial activity (ibid., paras. 22-26). Indeed, the Tribunal has a well-established framework of best practices that ensure the highest standards of fairness and efficiency. As an example, the 2009 Manual on Developed Practices sets out the standard timelines for the pretrial stage and the methodology used by the Tribunal to project the estimated length of a trial.[22] In addition, the judicial operations of the Tribunal are governed by a set of detailed Rules of Procedure and Evidence, and the Tribunal engages in numerous other "case processing practices", including the close monitoring of case progress by the Trial and Appeal Scheduling Working Group and regular meetings of team leaders, as well as established processes for the drafting of judgments.[23] In this regard, the Tribunal was somewhat perplexed by the conclusion of OIOS that the Tribunal "does not appear to collect information that facilitates the examination of case processing practices or consensus on meaningful time standards to benchmark the progress of different cases, let alone against other ad hoc tribunals" (A/70/873-S/2016/441, para. 40).

57. Furthermore, the Tribunal considers that, at the very end of its lifespan, implementing such a recommendation cannot be realistically contemplated. It notes that, at the date of submission of the report of OIOS, only four cases remained and all had established end-dates which matched the mandates of the judges sitting on each case. Since July 2016, there are only two remaining cases, both of which must be concluded by 30 November 2017, at the latest. Given these circumstances, it does not make sense to develop a time standard benchmark against which to monitor the progress of these two remaining cases. Moreover, in the Tribunal's view, it is not feasible, practical or economically viable to implement such a recommendation during its final biennium. The Tribunal must focus its remaining time and resources on concluding the existing judicial caseload.

58. While outside its current resourcing capabilities, the Tribunal certainly acknowledges the potential utility of documenting best practices for future ad hoc tribunals. In this regard, in a spirit of being constructive, the Tribunal suggests that future courts and tribunals could alternatively consider the following: "Publish statistical data, as appropriate, on the length of trials and appeals with correlations on case complexity, the different types of case management approaches used, and the rates of slippage from original to final forecast. The experience of the Tribunal could be useful for future courts and tribunals to develop their own tailor-made standards based on its past cases for best practices."

[22] See pp. 71-76 of the Manual, which was prepared in conjunction with the United Nations Interregional Crime and Justice Institute, as part of a project to preserve the legacy of the Tribunal.

[23] For example, the judgment-drafting process starts with the preparation of a preliminary judgment outline. Different models have been developed at the Tribunal, although normally, outlines for trial judgments are generated on the basis of the indictment and the parties' pretrial briefs. In addition, a style guide is issued in advance to avoid the need to spend time and effort standardizing numerous things, including language, spelling, formatting, punctuation, capitalization, numbers and dates. There is also a cite-checking guide to ensure accuracy in footnote and source references.

2. Recommendation 2

59. Recommendation 2 states: **"Ensure that planning and monitoring mechanisms are tracking efficiency results.** The Tribunal should document cost-saving and efficiency gains and, as a post-mortem exercise, analyse past trial and appeal cases in order to understand how the scope, size and complexity of cases affect the timeliness of judicial activities, including relative to other judicial institutions" (ibid., para. 57).

60. For the reasons set out in its response (ibid., annex I, paras. 29-34), and following full discussion with the judges, principals and senior staff, the Tribunal has decided not to implement the recommendation. As noted in the response, the Tribunal sees the benefit in undertaking analysis of past trial and appeal cases to understand how their unique features affected judicial timelines (ibid., para. 33). However, the tracking, documentation and analysis envisaged by the recommendation would require more time and resources than the Tribunal currently has available. All the resources of the Tribunal are focused on completing its work by 2017 and this must remain the priority.

61. Furthermore, at this late stage in its history, the Tribunal sees little value for its own operations in tracking "efficiency results" in respect of the final two cases, which already have established target end-dates. In addition, and as mentioned above with respect to recommendation 1, the Tribunal is concerned about the impact that "tracking" judicial progress in the manner envisaged by OIOS might have on judicial independence and fair trial considerations in respect of ongoing cases. This is not to say that judges should not be held accountable for inefficiencies or that they consider themselves to be immune from monitoring. However, under the OIOS model, and particularly where the progress of a case may appear to deviate from an established "norm" owing to factors unique to that case, the judges could potentially face unfair criticisms of inefficiency or undue haste. Finally, the Tribunal is unsure who, in the view of OIOS, would undertake such a "post-mortem" exercise following the conclusion of the mandate of the Tribunal.

62. Nevertheless, the Tribunal acknowledges the value of studies of its efficiency results, both in terms of its legacy and in sharing information on best practices with other institutions. It would have been open to participating in such studies, assuming sufficient resources were made available to it and that the studies were undertaken prior to the closure of the Tribunal in 2017. For studies undertaken or continuing after its closure, the Tribunal considers that arrangements would need to be made with the Mechanism. Dependent on these factors, the Tribunal would have welcomed a recommendation along the following lines: "Experience gained by the Tribunal should be included in future studies that aim to generate evidence to demonstrate the impact of operational and procedural innovations adopted as part of the completion strategy. Any such study should document cost-saving and efficiency gains and as a post-mortem exercise, analyse past trial and appeal cases to understand how the different scope, size and complexity of cases affects the timeliness of judicial activities, including relative to other institutions."

3. Recommendation 3

63. Recommendation 3 states: **"Develop a code of conduct and disciplinary mechanism for the professional conduct of judges.** The Tribunal should develop a code of conduct that clarifies the role of judges and serves as a check against abuses and mistakes at the Tribunal. It should also create a disciplinary mechanism for the professional conduct of judges in order to enable staff members of the United Nations to address allegations of misconduct concerning judges" (A/70/873-S/2016/441, para. 58).

64. In its response, the Tribunal indicated that it agreed in principle with this recommendation and on the importance of a code of conduct, but considered the recommendation to be of marginal importance at this point in the Tribunal's history (ibid., annex I, para. 35-37). It further considered that the Mechanism had already adopted a code of conduct that applied to most of the judges of the Tribunal (ibid., para. 37). However, the Tribunal took serious note of the suggestions made by Member States during the President's mission to New York in June 2016, and agreed with them that adopting a code of conduct for its judges would be feasible and also set an example of best practice for future courts and tribunals.

65. Accordingly, the Tribunal is pleased to report that, at the forty-seventh plenary session, held on 6 July 2016, the judges of the Tribunal unanimously decided to adopt the Code of Professional Conduct for the Judges of the Tribunal (see enclosure VII to the present report). The code entered into force immediately and is based on the existing code for judges of the Mechanism.[24]

66. Following full discussion with the judges, principals and senior staff, however, the Tribunal has not implemented the OIOS recommendation that the Tribunal create a disciplinary mechanism for judges. The Tribunal notes that, as with the code of conduct, such a mechanism would need to be voluntarily adopted by the judges of the Tribunal, as they are not staff members of the United Nations. It further wishes to inform the Security Council that the judges of the Tribunal would have been willing to accept a disciplinary mechanism and in fact consider such a mechanism to be desirable. However, the judges and management are concerned that the time and resources required to implement this recommendation would take away critical time and resources from the existing judicial work, which simply must be concluded by November 2017.

67. Finally, the Tribunal notes that the lacuna identified by OIOS is not limited to the judges of the Tribunal. To the contrary, there are a number of other high-level and non-staff officials within the United Nations (including other judges, special rapporteurs and high commissioners, etc.) who fall outside the scope of the accountability and disciplinary scheme applicable to United Nations staff (see, e.g., ST/AI/371, ST/SGB/2005/21 and ST/SGB/2008/5). The Tribunal respectfully submits that the development of a disciplinary mechanism might therefore be appropriately referred to the General Assembly for consideration at an organizational level.

[24] Code of Professional Conduct for Judges of the Mechanism (MICT/14), 11 May 2015.

4. Recommendation 4

68. Recommendation 4 states: **"Develop a centralized information system on staff separations and improve human resources analysis for data-driven decision-making.** The Tribunal should improve its capabilities to retrieve and process data on staff separations by creating a system that also encompasses, among other things, historical statistics and information collected through exit interviews. The database could be leveraged by employing analysis to monitor turnover and identify emerging risks as the Tribunal accelerates downsizing" (A/70/837-S/2016/441, para. 59).

69. For the reasons set out in its response (ibid., annex I, paras. 38-51), and following full discussion with the judges, principals and senior staff, the Tribunal has decided not to implement the recommendation. As noted in the response, such studies could in theory yield additional insights into trends on separations. However, the recommendation does not take into account that: (a) statistical analysis would not provide better insight into staff departures than is currently available to the managers of the Tribunal; (b) the Tribunal does not have the expertise or time to conduct detailed data collection and analysis of this sort and must continue to focus on completing its judicial work; (c) the development of such a system would be time-consuming and likely not completed before the closure of the Tribunal; (d) the result would be of limited value to the Tribunal in its final months of operation; (e) under the new strategy of the United Nations Office of Information and Communications Technology (see A/69/517), all application development proposals must pass through a governance process predicated on a demonstrated return on investment and the identification of the project as a priority, and the Tribunal does not consider such a system to be a priority in its final year.

70. Nonetheless the Tribunal, recognizing the benefit of having additional insights into staff separations, would have welcomed a recommendation along the following lines, assuming that sufficient resources would be made available to it: "Approach the United Nations Office of Information and Communications Technology and the Umoja team to ascertain: (a) how Umoja could support the collection and analysis of staff departure data; and (b) whether such a system would demonstrate a clear return on investment and assist in managing accelerating downsizing. The Tribunal should improve its capabilities to capture data on staff separations by recording information collected through exit surveys."

D. Conclusion

71. As outlined above, while the Tribunal had concerns in relation to the scope and limitations of the OIOS evaluation, it cooperated fully throughout and welcomed the opportunity to discuss and review its own achievements and challenges, and to identify areas of improvement. The Tribunal considers the OIOS evaluation to have been a useful exercise in this respect and to have provided valuable food for thought. It again assures Member States that all OIOS recommendations were conscientiously and thoroughly discussed by the judges, principals, senior staff and management across all sections of the Tribunal.

72. Having said this, for the reasons already set out, the Tribunal considered the bulk of the OIOS recommendations to be impractical and/or inapplicable to the Tribunal in its final 18 months of operations. In this respect, the Tribunal regrets that the evaluation was conducted so late in its lifespan. However, the Tribunal has partially implemented recommendation 3, to the extent possible and, in an effort to be constructive and cooperative, has identified several alternative recommendations in the hope that future courts and tribunals can benefit from these suggestions. The Tribunal remains fully committed to continuously engaging with the Security Council to enhance its methods and work in order to ensure a responsible and timely completion of its mandate in December 2017.

VI. Judicial support and administration activities

A. Support for core judicial activities

73. The key priority of the Registry during the reporting period continued to be providing full support to the remaining judicial activities of the Tribunal, thereby assisting the Tribunal in achieving its completion strategy targets.

74. The current reporting period saw the provisional conclusion of the presentation of evidence in the last trial before the Tribunal. The last witness in the *Mladić* case testified partly in The Hague and partly by videoconference link, necessitating comprehensive assistance prior to, during and after testimony from the Victims and Witnesses Section. The Section also complied with two judicial orders to consult protected witnesses in ongoing cases in connection with requests related to their protective measures. The protection of witnesses in concluded cases was transferred to the Mechanism on 1 July 2013. The Registry further facilitated and serviced 11 court days in both trial and appeal proceedings. The processing and dissemination of filings continued at a substantive level, with over 496 filings, among which were 36 Registry legal submissions, amounting in total to 18,475 pages.

75. The Conference and Language Service Section provided 78 conference interpreter days and translated 6,351 pages.

76. The Office for Legal Aid and Defence Matters continued to administer the Tribunal's legal aid system for approximately 50 defence team members, safeguarding the defendants' rights to legal representation and adequate resources for their defence. The Office also administered the remuneration of amici curiae.

77. The Registry continued to operate the United Nations Detention Unit, a remand and detention centre located within a Dutch penitentiary in The Hague. During the reporting period, the Detention Unit held a total of nine Tribunal detainees (in addition to three Mechanism detainees), decreasing to seven as the Tribunal appeal proceedings concluded for two detainees. The Detention Unit runs a programme of detention and remand that is in line with or exceeds international humanitarian standards. On 21 September 2016, a delegation of the International Committee of the Red Cross completed its annual inspection of the Detention Unit.

B. Administration activities

78. The Division of Administration continued to provide high quality services in the areas of security, human resources, general services, procurement, finance, budget, and information technology as the Tribunal reaches the challenging final phases of its work.

79. The Division of Administration also continued to take the lead in coordinating responses to, and compliance with, the reports and recommendations of oversight bodies (United Nations Board of Auditors and OIOS). The Liquidation Task Force continued to meet on a regular basis and work on planning for the timely end of Tribunal operations and the appropriate handover of residual activities to the Mechanism. The Tribunal remains committed to an efficient and timely liquidation process.

C. Downsizing

80. The Tribunal remains committed to completing its remaining cases and meeting the projected date for its closure in 2017. At the beginning of 2016, a total of 379 posts remained. Since the Tribunal was able to conclude three more cases during the first half of 2016, it further reduced the number of posts by 51. The projection for January 2017 is 272 remaining posts, all of which will be abolished over the course of the year.

81. The Tribunal's Learning and Career Management Office (formerly the Career Transition Office) continued to support staff in all aspects of professional and personal development, career management, and transition during the period of downsizing and closure of the Tribunal by offering various development programmes, language courses, vocational training courses, career consultation services and career-related workshops.

D. Continued preparation of records for migration to the Mechanism

82. The Tribunal's Records and Archives Working Group continues to coordinate and oversee the implementation of an overall project plan for the disposition of Tribunal records (both physical and digital) and the transfer of relevant records to the Mechanism.

83. Tribunal offices continue to identify and appraise their records and prepare appropriate records for transfer under the direction and with the support of the Mechanism Archives and Records Section, which provides training on the preparation and transfer of records in accordance with the established standards on an ongoing basis.

84. The Tribunal has transferred the physical judicial records for its completed cases to the Mechanism, including five recently closed cases (the appeal case of *Prosecutor v. Jovica Stanišić and Franko Simatović*, the trial case of *Prosecutor v Radovan Karadžić*, the *Šešelj* case, the *Hadžić* case and the *Stanišić and Župljanin* case). In total, the Tribunal has transferred 35 per cent of its anticipated volume of physical archives to the Mechanism. As part of the ongoing review and

preparation of records for transfer to the Mechanism Archives and Records Section, in this reporting period Tribunal offices destroyed 120 linear metres of redundant and/or time-expired records.

85. Disposition plans for digital records have been finalized for all offices and 1.4 petabytes (80 per cent) of the Tribunal's digital records have been transferred to the Mechanism Archives and Records Section to date. The transferred volume is comprised largely of the Tribunal's audiovisual recordings of courtroom proceedings.

VII. Support to the Mechanism

A. Support to the judicial activities of the Mechanism

86. During the reporting period, the Registry of the Tribunal continued to double-hat in providing the Mechanism, and its Hague branch in particular, with judicial support services. As such, it provided support for the legal aid function, which included administrative and financial support for both branches, for a total of approximately 70 members of the defence team. The Registry also assisted with language services, detention services, witness support services and the maintenance of judicial records. This included assisting the Mechanism in finalizing its regulatory framework to reflect lessons learned and best practices from both the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia.

B. Administrative support provided to the Mechanism

87. The Tribunal continues to ensure that both branches of the Mechanism are provided with effective administrative services as a transition measure prior to the full administrative autonomy of the Mechanism.

88. In addition to the support provided by the Tribunal to the Mechanism in the areas of security, human resources, general services, procurement, finance, budget and information technology, the Tribunal continues to make significant contributions to the procurement of goods and services for the new Mechanism facility in Arusha, which will have opened by the time of the publication of the present report.

C. Premises

89. The Tribunal continues to occupy the same premises, which, in order to maximize cost savings and efficiency, are being shared with The Hague branch of the Mechanism until the closure of the Tribunal at the end of 2017.

VIII. Communications and outreach

90. The Outreach Programme continued the fourth cycle of its Youth Outreach Project by organizing 15 lectures and presentations for high school and university students in the countries of the former Yugoslavia. The Outreach Programme also organized the screening of its latest documentary in The Hague, as well as the launch of its anniversary publication, "15 years of Outreach at the ICTY". During the reporting period, more than 2,700 students and professionals visited the Tribunal as part of the Visits Programme. In addition, a record 870 members of the public came to the Tribunal on 25 September 2016 during its most successful Open Day ever. The main donor of the Outreach Programme — the European Union — confirmed its pledge to continue providing financial support until the end of the Tribunal's mandate.

91. The Tribunal has continuously strengthened its presence on digital communications platforms, such as the Tribunal website (800,000 page views); YouTube (with videos of trial hearings viewed more than 200,000 times); Facebook (more than 1,000 followers); Twitter (more than 8,000 followers); and LinkedIn (around 7,000 professionals).

IX. Legacy and capacity-building

92. In preparation for its closure at the end of 2017, the Tribunal has initiated a series of public events entitled: "ICTY legacy dialogues". A committee, including representatives of the Office of the President, the Office of the Prosecutor, the Registry and the Association of Defence Counsel, has met regularly to plan and organize these events, which will be crucial in consolidating the image and legacy of the Tribunal before it closes. Three events in the series have already been held: (a) the launch of the research report of the Victim and Witness Section, entitled "Echoes of testimonies: a pilot study into the long-term impact of bearing witness before the ICTY", supported by the University of North Texas and financed in part by voluntary contributions and which was finalized during the reporting period; (b) the English language premiere of the new documentary produced by the Outreach Programme, *Crimes before the ICTY: Višegrad*; and (c) the launch of the Outreach Programme's publication,"15 years of Outreach at the ICTY". The "ICTY legacy dialogues" series of activities will continue throughout 2016 and 2017 and the Tribunal will be counting on the support and cooperation of Member States in these endeavours.

93. The negotiations on the signing of memorandums of understanding to facilitate the establishment of the first two International Tribunal for the Former Yugoslavia information centres in Bosnia and Herzegovina have now been completed. The information centres aim to provide members of the public with access to the Tribunal's public records and archives in accordance with paragraph 15 of resolution 1966 (2010). In September 2016, the Sarajevo City Assembly endorsed the proposed text of the memorandum of understanding on the establishment of the information centre in Sarajevo. The same was done by the Executive Board of the Srebrenica-Potočari Memorial Centre in October 2016 for the establishment of the

information centre in Srebrenica/Potočari. The latter is now pending confirmation by the Presidency of Bosnia and Herzegovina.

X. Conclusion

94. With just over one year until its closure, the Tribunal has now completed almost all of its cases. Only one trial, one appeal and one contempt case remain. While the number of cases is small, the volume of work remaining is enormous and, as reported above, the Tribunal continues to downsize and to face significant challenges in the form of staff attrition. Nevertheless, the Tribunal remains committed to closing in December 2017 and to concluding all judicial work on time. Its judges and staff are working extremely hard to ensure that this is the case, and the Tribunal expresses its heartfelt thanks for their efforts and outstanding contribution.

95. The Tribunal also wishes to express its deep appreciation to the Security Council, its Informal Working Group on International Tribunals, the Office of Legal Affairs and the wider United Nations membership for their continued — and vital — support and assistance. It emphasizes that the Tribunal will rely upon such support and assistance more than ever before, as it approaches the final completion of its mandate. Indeed, the successful closure and enduring legacy of the Tribunal will be the United Nations' success, and will only be possible with the continued cooperation of Member States in the coming year. The Tribunal looks forward to working with all Member States in the realization of that success.

Annex II

Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council under paragraph 6 of Security Council resolution 1534 (2004)

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I. Overview

1. The Prosecutor submits the twenty-sixth completion strategy report pursuant to Security Council resolution 1534 (2004), covering developments between 16 May and 15 November 2016.

2. In the reporting period, trial proceedings in the *Mladić* case neared completion, with the submission of the parties' written final briefs, while oral closing arguments are anticipated to be presented soon after the end of the reporting period. The *Hadžić* case was terminated on 22 July 2016, following the death of the accused. An appeal judgment was rendered in the *Stanišić and Župljanin* case, affirming the convictions of both accused and their sentences of 22 years of imprisonment each. Appeals proceedings in the *Prlić et al.* case continued, and it is expected that oral arguments will be heard in the first quarter of 2017.

3. Cooperation between the Office of the Prosecutor and the authorities in Bosnia and Herzegovina, Serbia and Croatia continued during the reporting period. However, with the continued non-arrest and transfer of three indictees to the Tribunal's custody, Serbia remains in violation of its legal obligations to cooperate with the Tribunal. This non-cooperation has now been compounded by Serbia's failure to adhere to judicial orders and provide regular biweekly reports on its efforts to execute the arrest warrants. The Office of the Prosecutor urges the Serbian authorities to rectify their non-cooperation, resume providing reports to the Tribunal and execute the Tribunal's arrest warrants as soon as possible.

4. The Office of the Prosecutor of the Tribunal, in conjunction with the Office of the Prosecutor of the Mechanism, continued to implement the "one office" policy to further streamline operations and reduce costs by effectively integrating staff and resources across the Offices. Since 1 March 2016, staff and resources have been flexibly deployed across both institutions in "double-hatting" arrangements as and when needed based on operational requirements, in accordance with the directions of the Security Council set forth in its resolution 1966 (2010). The Office of the Prosecutor of the Tribunal further continued its downsizing, in line with the completion of trials and appeals as foreseen in its approved budget. While severe staff attrition remains a pressing challenge, the "one office" approach is providing an important avenue for ameliorating some aspects of it. Finally, consistent with resolution 1966 (2010) and article 6 of the Transitional Arrangements, during the reporting period the Office of the Prosecutor of the Tribunal continued the coordinated transition of so-called "other functions" to the Office of the Prosecutor of the Mechanism.

II. The completion of trials and appeals

A. Overview of ongoing challenges

5. The Office of the Prosecutor is rapidly approaching the completion of its primary case-related obligations. During the reporting period, the appeal judgment in *Stanišić and Župljanin* was delivered, while trial proceedings in the *Hadžić* case were terminated following the death of the accused. Only one trial (*Mladić*) and one appeal (*Prlić et al.*) remain ongoing. With final submissions by the parties in these

last two cases expected in the coming months, the primary case-related challenge in the final year of the Tribunal's mandate will be the expeditious rendering of judgments in these two final cases.

B. Update on the progress of trials

1. *Mladić*

6. Trial proceedings in the *Mladić* case neared completion during the reporting period. On 16 August 2016, the Trial Chamber established that the defence case was closed. On 25 October 2016, the parties submitted their written final trial briefs. Oral closing arguments by the parties have been scheduled to commence on 5 December and be completed on 15 December 2016. The trial judgment is still expected to be issued in November 2017.

7. In addition to preparing its final submissions, the Office of the Prosecutor has been required during the reporting period to respond to a large number of evidentiary and procedural motions filed by the defence. Despite this intense litigation during the final trial brief preparation phase, the Office prepared and filed all necessary submissions by the applicable deadlines. The Office will continue to undertake all efforts to support the expeditious completion of this case.

2. *Hadžić*

8. As previously reported, the Trial Chamber adjourned trial proceedings in the *Hadžić* case on 20 October 2014 owing to the ill health of the defendant, approximately midway through the presentation of the defence case. Throughout the past four reporting periods, the Office of the Prosecutor continued to pursue all reasonable options for resuming and completing the trial, advocating the expeditious completion of the trial in a manner consistent with the accused's right to a fair trial.

9. On 12 July 2016, the accused passed away while on provisional release in Novi Sad, Serbia. On 22 July, the Trial Chamber issued its decision terminating the proceedings in this case.

10. The Office of the Prosecutor understands that victims and the public will be dissatisfied that this case has not been completed with a verdict on the charges against the accused. As Hadžić was a fugitive from justice for seven years, this unfortunate outcome underscores the importance of ensuring that all indictees are brought to justice as quickly as possible.

C. Update on the progress of appeals

11. On 30 June 2015, the Appeals Chamber in the *Stanišić and Župljanin* case dismissed the convicted persons' appeals in their entirety and affirmed the sentences of 22 years of imprisonment imposed by the Trial Chamber. The Appeals Chamber further granted the Office of the Prosecutor's appeal in part and found that the Trial Chamber had erred in failing to enter convictions under certain counts of the indictment, although it declined to correct that error on appeal.

12. The Appeals Division of the Office of the Prosecutor continues to focus on expeditiously and effectively completing the final appeal proceeding before the Tribunal in the *Prlić et al.* case. It is anticipated that oral appeal arguments in that case will be held sometime in spring 2017. The "one office" policy has enabled significant resource gains on this case as a number of Mechanism Office of the Prosecutor staff have been assigned to the case. The Appeals Division continued to assist trial teams with briefing major legal issues, drafting final trial briefs and preparing closing submissions, including in particular with respect to the *Mladić* case. Finally, during the reporting period the Appeals Division, along with other staff members, supported the Office of the Prosecutor of the Mechanism in preparing for appeals proceedings in the *Karadžić* and *Šešelj* cases, consistent with the "one office" approach and to ensure that the Office of the Prosecutor of the Mechanism benefited from the case-specific knowledge and expertise of the Appeals Division.

III. State cooperation with the Office of the Prosecutor

13. The Office of the Prosecutor continues to rely on the full cooperation of States to successfully complete its mandate, as set out in article 29 of the Statute of the Tribunal. The Prosecutor met with officials in Belgrade on 27 and 28 October, and in Sarajevo on 14 and 15 November 2016. Throughout the reporting period, the Office maintained a direct dialogue with governmental and judicial authorities from Serbia, Croatia and Bosnia and Herzegovina. The field offices in Sarajevo and Belgrade continued to facilitate the work of the Office in Bosnia and Herzegovina and Serbia, respectively.

A. Cooperation between the States of the former Yugoslavia and the Office of the Prosecutor

14. The Office of the Prosecutor continued to have appropriate access to documents, archives and witnesses in Bosnia and Herzegovina, Croatia and Serbia during the reporting period.

15. The Office is very concerned that Serbia remains in a state of non-cooperation with the Tribunal owing to its continued failure to execute the Tribunal's arrest warrants for three Serbian indictees. Unfortunately, Serbia has further failed, in violation of judicial orders, to provide updates to the Tribunal on its efforts to execute the arrest warrants. The Office of the Prosecutor calls upon the Serbian authorities to promptly resume providing reports to the Tribunal, and to undertake all necessary efforts to arrest the three indictees and surrender them to the Tribunal's custody.

B. Cooperation between other States and organizations and the Office of the Prosecutor

16. Cooperation and support from States outside the former Yugoslavia, as well as from international organizations, remains integral to the successful completion of

cases at the Tribunal. Assistance continues to be needed to access documents, information and witnesses, as well as in matters related to witness protection, including witness relocation. The Office of the Prosecutor again acknowledges the support it received during the reporting period from States Members of the United Nations and international organizations, including the United Nations and its agencies, the European Union, the North Atlantic Treaty Organization, the Organization for Security and Cooperation in Europe and the Council of Europe.

17. The international community continues to play an important role in providing incentives for States in the former Yugoslavia to cooperate with the Tribunal. The European Union policy of conditionality, linking membership progress to full cooperation with the Tribunal and the Mechanism, remains a key tool for ensuring continued cooperation and consolidating the rule of law in the former Yugoslavia.

IV. Transition from the Tribunal to national war crimes prosecutions

18. Consistent with Security Council resolution 1966 (2010) and article 6 of the Transitional Arrangements, the Office of the Prosecutor of the Tribunal during the reporting period continued the transition to the Mechanism Office of the Prosecutor of responsibilities and activities related to assisting national jurisdictions to prosecute war crimes. Information on these activities is accordingly presented in the report of the Office of the Prosecutor of the Mechanism.

19. For the past eight years, the joint European Union/International Tribunal for the Former Yugoslavia Training Project for National Prosecutors and Young Professionals from the former Yugoslavia has been a central component of the strategy of the Office of the Prosecutor of the Tribunal to strengthen the capacity of national criminal justice systems in the former Yugoslavia for war crimes cases. The young professionals component of the Project terminated at the end of 2015, while its visiting professionals component will terminate at the end of 2016.

20. The Office of the Prosecutor of the Tribunal is pleased to report that following the unanimous request from national prosecution services in the region, the European Union has now agreed to extend both components of the Project for another two-year period. The Project will also be transitioned from the Tribunal to the Office of the Prosecutor of the Mechanism. The Office of the Prosecutor is grateful to the European Union for its consistent support to this important project, and for recognizing the ongoing need to build national justice sector capacity by educating and training young lawyers from the region in our offices.

V. Downsizing

A. Downsizing of posts in the Office of the Prosecutor and provision of career transition support to staff of the Office

21. At the beginning of 2016, the Office of the Prosecutor had a total of 81 staff members. During the reporting period, following the completion of the *Stanišić and*

Župljanin and *Hadžić* cases, the Office downsized seven Professional and five General Service posts. In accordance with the approved budget, the Office will further downsize an additional five Professional posts and seven General Service posts on 1 January 2017, for a total of 14 Professional and 12 General Service posts downsized in 2016. Delays in the completion of proceedings during the reporting period have not affected the downsizing of the Office, as it has been able to absorb the additional requirements within existing resources and continue its downsizing on schedule.

22. The Office is actively supporting measures to assist staff in making the transition from their work at the Tribunal to the next step in their careers. The Office continues to initiate and support training for its staff members and assist staff to take advantage of the services offered by the Career Transition Office. In relation to this development, the Office is facilitating networking and other opportunities to assist its staff members, including opportunities for its staff members to become qualified for various United Nations standby rosters.

B. Supporting and sharing resources with the Mechanism

23. The resource-sharing by the Office of the Prosecutor of the Tribunal with the Office of the Prosecutor of the Mechanism continued during the reporting period under the "one office" approach to integrate the staff and resources of the two Offices. All Prosecution staff are available to "double-hat" so that they can be flexibly assigned to either Tribunal or Mechanism-related work depending on operational requirements and their case-related knowledge. Resources of both Offices are also being flexibly deployed where needed.

24. For the Office of the Prosecutor of the Tribunal, which is continuing its downsizing, the primary impact of the "one office" approach will be to ensure that the staff and resources of the Mechanism can be made available at no additional cost to address unforeseen developments in Tribunal cases and to ameliorate some of the pressing problems caused by staff attrition in the Tribunal's final phase. These are important measures to help ensure the successful implementation of the completion strategy.

VI. Conclusion

25. The reporting period saw important progress towards the completion of the Tribunal's mandate, with the conclusion of one appeal and substantial steps towards the completion of the final trial. The Office of the Prosecutor remains firmly focused on expeditiously completing the remaining trial and appeal, while simultaneously reducing its resources and downsizing its staff. The Office of the Prosecutor will continue to allocate resources flexibly and to effectively manage staff attrition and downsizing.

26. By failing to execute arrest warrants and transfer three indictees to the Tribunal's custody, Serbia is not in compliance with its international obligations to cooperate with the Tribunal. This non-cooperation has now been compounded by Serbia's failure to adhere to judicial orders and provide regular biweekly reports on

its efforts to execute the arrest warrants. The Office of the Prosecutor hopes that this situation is urgently resolved so Serbia can return to the status of full cooperation.

27. In all of these endeavours, the Office of the Prosecutor relies upon and gratefully acknowledges the support of the international community and especially of the United Nations Security Council.

Enclosure I

A. Trial judgments 18 May to 17 November 2016 (by individual)

Name	*Former title*	*Initial appearance*	*Trial judgment*
None[a]			

[a] Following the death of Goran Hadžić on 12 July 2016, the Trial Chamber terminated the proceedings in the *Hadžić* case on 22 July 2016. No trial judgment was issued.

B. Appeal judgments 18 May to 17 November 2016 (by individual)

Name	*Former title*	*Appeal judgment*
Mićo Stanišić	Minister of the Ministry of Interior of the Republika Srpska	30 June 2016
Stojan Župljanin	Chief of the Regional Security Services Centre of Banja Luka	30 June 2016

Enclosure II

A. Persons on trial as at 17 November 2016 (by individual)

Name	*Former title*	*Initial appearance*	*Start of trial*
Ratko Mladić	Commander of the Bosnian Serb Army Main Staff	3 June 2011	Trial commenced on 16 May 2012

B. Persons on appeal as at 17 November 2016 (by individual)

Name	*Former title*	*Date of trial judgment*
Jadranko Prlić	President, Croatian Republic of Herceg-Bosna	29 May 2013
Bruno Stojić	Head of Department of Defence, Croatian Republic of Herceg-Bosna	29 May 2013
Slobodan Praljak	Assistant Minister of Defence of Croatia and Commander of the Croatian Defence Council Main Staff	29 May 2013
Milivoj Petković	Deputy Overall Commander, Croatian Defence Council	29 May 2013
Valentin Ćorić	Chief of Military Police Administration, Croatian Defence Council	29 May 2013
Berislav Pušić	Control Officer, Department of Criminal Investigations, Military Police Administration, Croatian Defence Council	29 May 2013

C. Trial judgments for contempt 18 May to 17 November 2016 (by individual)

Name	*Former title*	*Date of order in lieu of indictment*	*Trial judgment*
None			

D. Appeal judgments for contempt 18 May to 17 November 2016 (by individual)

Name	*Former title*	*Date of trial contempt judgment*	*Appeal judgment*
None			

Enclosure III

Proceedings completed in the period from 18 May to 17 November 2016

A. Trial judgments rendered in the period from 18 May to 17 November 2016

None

B. Contempt judgments rendered in the period from 18 May to 17 November 2016

None

C. Appeals from trial judgments rendered in the period from 18 May to 17 November 2016

Stanišić and Župljanin IT-08-91-A (30 June 2016)

D. Appeals from contempt rendered in the period from 18 May to 17 November 2016

None

E. Final interlocutory decisions rendered on appeal in the period from 18 May to 17 November 2016

None

F. Review, referral and other appeal decisions rendered in the period from 18 May to 17 November 2016

None

Enclosure IV

Proceedings ongoing as at 17 November 2016

A. Trial judgments pending as at 17 November 2016

Mladić IT-09-92-T

B. Contempt judgments pending as at 17 November 2016

Jojić et al. IT-03-67-R77.5

C. Appeals from judgment pending as at 17 November 2016

Prlić et al. IT-04-74-A

D. Appeals from contempt pending as at 17 November 2016

None

E. Interlocutory decisions pending as at 17 November 2016

1. *Mladić* IT-09-92-AR73.6
2. *Mladić* IT-09-92-AR73.7

F. Review, referral and other appeal decisions pending as at 17 November 2016

None

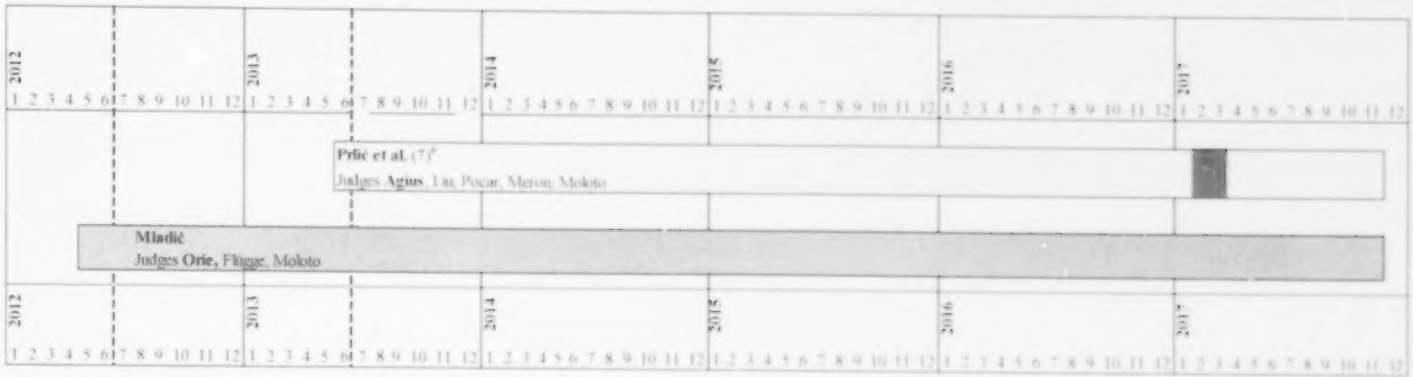
Enclosure V

Decisions and orders rendered during the period from 18 May to 17 November 2016

1. Total number of decisions and orders rendered by the Trial Chambers: 80
2. Total number of decisions and orders rendered by the Appeals Chamber: 13
3. Total number of decisions and orders rendered by the President of the Tribunal: 20

Enclosure VI

Status of the trial and appeal schedule of the Tribunal on 17 November 2016[a]



[a] Contempt matters are not included.

[b] Number of accused appellants, including the prosecution.

[c] The appeal hearing will take place during February and/or March 2017. The dates are yet to be finalized.

Appeal Proceedings
Trial Proceedings
Appeal Hearing

Enclosure VII

Code of professional conduct for the judges of the Tribunal, adopted on 6 July 2016

Preamble

The judges of the International Criminal Tribunal for the former Yugoslavia ("Tribunal"):

Recalling that judges shall be persons of high moral character, impartiality, and integrity as required by Article 13 of the Statue of the Tribunal ("Statute");

Noting the solemn declaration required by Rule 14 of the Rules of Procedure and Evidence of the Tribunal ("Rules");

Recognizing that the independence and impartiality of judges is fundamental to ensuring public confidence in a fair and transparent international judicial process;

Recognizing that judges are members of a collegial body, with each judge pursuing the same objective of ensuring the achievement of international criminal justice;

Having regard to the United Nations Basic Principles on the Independence of the Judiciary (1985) and other international and national rules and standards relating to judicial conduct and the right to a fair trial;

Considering that the principles set forth in this Code shall contribute to judicial independence, impartiality and transparency of the judicial process and shall enhance the public confidence in the Tribunal;

Have agreed as follows:

Article 1. Adoption of the Code

This Code has been adopted by the judges pursuant to Rule 24 of the Rules and shall be read subject to the Statute and the Rules.

Article 2. Independence

1. In the exercise of their judicial functions, judges shall be independent of all external authority or influence.

2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

Article 3. Impartiality

1. Judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions.

2. Judges shall avoid any conflict of interest as well as situations which might reasonably be perceived as giving rise to a conflict of interest.

Article 4. Integrity

1. Judges shall conduct themselves with probity and integrity in accordance with their judicial office, thereby enhancing public confidence in the judiciary.

2. Judges shall not directly or indirectly accept, offer, or provide any gift, advantage, privilege or reward that can reasonably be perceived as being intended to influence the performance of their judicial functions or the independence of their office.

3. Judges shall treat other judges and staff members with dignity and respect, and shall not engage in any form of discrimination, harassment, including sexual harassment, and abuse of authority.

Article 5. Confidentiality

Judges shall respect the confidentiality of consultations which relate to their judicial functions, the secrecy of deliberations, and the confidentiality of information acquired in the course of their duties, other than in public proceedings.

Article 6. Diligence

1. Judges shall give precedence to their judicial duties over all other activities.

2. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for judicial office.

3. Judges shall perform their judicial duties efficiently. These duties extend to the delivery of decisions fairly and with reasonable promptness.